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OFFICIAL MONTH IN REVIEW

December 1.—PRESIDENT MAGSAYSAY received Fernando Cardinal Quiroga y Palacios, who called at Malacañang this morning to pay his respects following his recent arrival in Manila to represent Pope Pius XII at the second National Marian Congress of the Philippines which opened today.

During the call, Cardinal Quiroga conveyed to the President the blessings of the Pope to the Filipino people in their struggle against Communism in this part of the world. He said the Pope was very much interested in the "brilliant fight" being waged by the Philippine Government headed by President Magsaysay to check the spread of subversive elements in this country. Cardinal Quiroga also informed the President that the people of Spain, appreciative of the spiritual ties which bind this country and theirs, were praying hard for the success of this young Republic. He said that Filipinos abroad are being looked upon as heroes because of the gallant stand they are taking, despite the fact that they are virtually surrounded by Communists.

The President replied that the Filipinos are doing their best with what little resources they have at their disposal. He expressed gratitude for the moral and material support being extended by friendly countries to the Philippines in its efforts to preserve its democratic institutions.

Accompanied by Mons. Egidio Vagnozzi, papal nuncio, Cardinal Quiroga arrived at Malacañang about 9:15 a.m. Also with him were Mons. Manuel Fernandez Conde, Mons. Armando Fattinnazi, and Fr. Camilo Gil, all members of his staff. The Cardinal's call lasted about 10 minutes.

After inspecting an honor guard formed by a unit of the presidential guard battalion at the Malacañang grounds, the papal envoy was shown to the President's study where the Chief Executive received him.

Following the call, the President had a conference with Solicitor General Ambrosio Padilla and Judge Salvador Esguerra, Malacañang legal adviser. During the conference, the President signed the appointments of Conrado Limcauco and Sumilang Bernardo as assistant solicitors.

The President also conferred with Sen. Quintin Paredes, who had just arrived from Washington as a member of the Philippine Economic Mission sent to the U. S. to work for the revision of the Bell Trade Act. No announcement was made after the conference which lasted about 10 minutes, although Paredes presumably reported on the progress of the mission.

The Chief Executive received callers until 12 noon. Among the last visitors were Sens. Alejo Mabanag, Tomas Cabili, and Macario Peralta, Jr.; and Reps. Felipe Garduque of Cagayan and Vicente L. Peralta of Sorsogon.

At 12:30, the President gave a luncheon in honor of the visiting members of the Joint Atomic Energy Committee of the U. S. Congress. At the luncheon, the President said that the Filipino people shared the hope that President Eisenhower's atoms-for-peace program would bring about a better world.

"It will be a great day," he said, "when our countrymen would have inexhaustible atomic power at their command for use in their homes, farms, and hospitals."

The President said it was his view that one of the great deterrents to war has been the atomic superiority of the United States. He said this has discouraged potential enemies from attempting aggression. At the

same time, he said that it is typical of the U. S. that it is now turning its attention to the peaceful uses of atomic energy.

The President said that many wonders could be accomplished with atomic energy and that it is up to the people of the world to make up their minds to take advantage of this opportunity. He added that the Philippines is solidly behind President Eisenhower's plan to bring to the whole world the benefits of peaceful uses of atomic energy.

Earlier, the President said he was glad to welcome the committee to the Philippines because it would give him opportunity to renew acquaintances with two old friends, Reps. W. Sterling Cole and James E. Van Zandt. The President recalled that he received substantial and generous assistance from Cole when he was in the United States working for the Rogers legislation for Filipino veterans. He also remembered that Van Zandt, who had served in the Philippines during the war, had voluntarily offered testimony regarding the wartime loyalty of the Filipino people in connection with the same legislation.

The President then proposed a toast to "our distinguished visitors." Responding for the committee, Sen. John W. Bricker echoed President Magsaysay's hope that the forces unlocked by man shall be used for beneficial rather than destructive purposes.

"We have reached the point," he said, "where the power to destroy has surpassed the power to defend. The great problem of our time is how to apply the forces at our command for the benefit of mankind rather than for its destruction."

Senator Bricker recalled that in hearings conducted by a subcommittee of the committee on the peaceful uses of atomic energy, the group learned of the many miracles that could be wrought by atomic energy in the fields of agriculture, biochemistry, medicine, and industry. He said one of the most hopeful prospects cited to this sub-committee was the possibility of curing cancer.

Sen. Bricker in turn proposed a toast "in which all of us here could sincerely join—to peace and the betterment of mankind."

The President at the Cabinet meeting today ordered the immediate re-assignment of the chief chemist of the Maria Cristina fertilizer plant to the factory site at Iligan City, Lanao, from Manila where he is currently holding office.

The President, who presided for only 30 minutes over the Cabinet meeting in between receiving visitors, reiterated his policy that government officials should stay as close as possible to the scene of their operations and be given the widest autonomy in making decisions. He expressed surprise that the actual operations head of a plant in Mindanao should hold office and run a factory from the National Power Corporation offices in Manila. This arrangement, he pointed out, was not conducive to efficient operation and competent management.

The President ordered that the chief chemist, Faustino R. Lozada, go immediately to Iligan City and set up his headquarters there. At the same time, the Chief Executive said he planned to look further into the operations of the fertilizer plant.

The Cabinet, whose deliberations were presided over during the major part of the meeting by Vice-President Carlos P. Garcia, also authorized the transfer of the bureaus and offices of the Department of Labor to the present building of the Department of Agriculture and Natural Resources upon completion of the new agriculture department building in Diliman in front of the Quezon Memorial. The construction of the agriculture compound is scheduled to start soon with the ₱2 million available in the current budget for this purpose.

The Cabinet also approved the recommendation of a special committee created to study and report on the assets of the National Coconut Corporation. The committee had recommended that all the assets of the NACOCO be applied to payment of its obligations to private parties and that Congress be requested to enact legislation appropriating the amount which will be

necessary to pay off all of NACOCO's obligations to private persons and entities. It was also recommended that NACOCO's indebtedness to the government and its branches and instrumentalities be considered written off as bad debts.

The Cabinet received a report from Social Welfare Administrator Pacita M. Warns on the emergency relief extended by the Social Welfare Administration to provinces in the Visayas worst hit by the last typhoon *Tilda*.

Administrator Warns reported that about 30 families rendered homeless had so far been reported in Cebu. Relief supplies sent to this province consisted of 70 sacks of rice, 35 cases of canned foods, 360 kilos of mongo, 46 packages of enriched rice, and four cases of condensed milk. The stricken families had been housed temporarily in the recreation hall of Cebu City.

Coordinating their work with those of local officials, SWA relief workers extended immediate aid to stricken towns in four Visayan provinces; namely, Cebu, Iloilo, Leyte, and Samar. Relief goods consisted of foodstuff and building materials for the typhoon victims.

The SWA Administrator also earmarked ₱5,000 for the purchase of building materials and other relief supplies for Iloilo. According to Mrs. Warns, about 300 families had been rendered homeless in that province. Ten Leyte towns most affected by the typhoon received aid. Immediate assistance to the sufferers had been extended by field workers of the SWA.

On the basis of a preliminary investigation conducted by the PCAC office, the President has ordered the suspension of Mayor Feliciano Avanceña of San Jose del Monte, Bulacan, pending formal investigation of an administrative charge against him for serious misconduct in connection with the irregular requisition and distribution of NARIC rice, Malacañang announced this day.

It appears that Mayor Avanceña requisitioned 150 cavans of NARIC rice, 70 cavans of which were paid for by him out of private funds. The 70 cavans, however, were not delivered to the municipal treasurer but to private parties. Only 10 cavans were actually delivered to the janitor in the office of the mayor.

Malacañang Technical Assistant Sofronio C. Quimson stated that the suspension of Mayor Avanceña will serve as a stern warning to all officials of the government that the President will not tolerate any irregularity in the distribution of NARIC rice intended for the indigent citizens of our municipalities. Quimson also renewed a Malacañang appeal for public cooperation in the project to bring rice to the indigent at the lowest possible price.

December 2.—THE PRESIDENT early this morning, before leaving for Nueva Ecija, administered the oath of office to Dr. Florencio Quintos as director of the Philippine General Hospital. Dr. Quintos is replacing Dr. Agerico B. M. Sison, who remains dean of the U. P. College of Medicine. Dr. Sison formerly held both the directorship of the PGH and the deanship of the U. P. College of Medicine.

Dr. Quintos' appointment is in line with the President's policy of not allowing one man to hold two important positions simultaneously.

The President and Dr. Quintos after the oathtaking discussed some of the salient problems of the hospital. According to Dr. Quintos, insufficiency of funds, lack of personnel, and inadequate water supply were among the biggest problems of the PGH.

On learning of the deplorable water shortage of the PGH, the President immediately telephoned the Metropolitan Water District and insructed Assistant Manager Jesus Perlas to install a pump right away, to be connected to the hospital's artesian well in order to augment the main water line.

The President was also informed that the hospital was not making any profit and that payments of the indigent patients were usually made

in backpay certificates. It was reported that the hospital had already received about ₱900,000 in backpay certificates.

The President said that he would make arrangements for redemption of about ₱100,000 worth of certificates every month.

Continuing his cross-country sweep, the President this day visited three Central Luzon barrios formerly infested with Huks; namely, San Juan, Laur, Nueva Ecija, and Batasan and Candating, at the foot of Mt. Arayat, known as the Huk bastion in Pampanga.

It was the first time people of the three barrios had seen the President of the Philippines. The Chief Executive was mobbed by barrio folks who fanatically kissed his hand and hugged him.

In San Juan, Laur, old women and men rushed to see the President after news had spread fast that the *Guy* was at the barrio.

The President was a virtual Santa Claus, as he gave on-the-spot concessions to the farmers. He gave them lands, promised them coffee seedlings, RFC loans, and other things farmers need. The tenants were happy and they cheered the President as he faced their problems in a round-table talk.

The President took off in a helicopter from Nichols airbase at 10:30 a.m. and landed at the campus of the Laur Central School. He was not expected to arrive there this day, but he had been awaited the previous day when many people gathered to wait for him.

The President arrived in Laur with Lieut. Gen. Jesus Vargas, Armed Forces chief of staff; Brig. Gen. Pelagio A. Cruz, Air Force commanding general; Brig. Gen. Alfonso Arellano, PATC commanding general, Legislative Secretary Jose C. Nable; Lands Director Zoilo Castrillo; Maj. Emilio Borromeo, presidential aide; Braulio Cristobal; and Malacañang newsmen.

The President was welcomed by top provincial and municipal officials led by Rep. Celestino Juan and Acting Gov. Antonio Corpuz.

After conferring with officials and farmers on a hill in San Juan, the President lunched with the residents of the barrio. He supplemented the food offered by the tenants with salmon and corn beef which he had taken along.

The President left San Juan at 1:30 p.m. Newsmen thought he had proceeded to Manila, but he in fact stopped at the barrios of Batasan and Candating, Arayat. Residents of the two barrios were surprised to find the President in their midst.

In Candating, the President learned that three Huk commanders were slain early this week. He was also informed that a resident of the barrio had gone to Gapan, Nueva Ecija, the previous day to meet him on his way to Laur. The man was surprised to meet him in his own barrio this day.

The President returned to Manila at 4:30 p.m.

Reacting sharply to reports regarding the existence of a five-million-peso lobby to legalize the stay of 2,400 Chinese temporary visitors in the Philippines as alleged by an LP spokesman in the press, the President reaffirmed the standing decision of the Cabinet to repatriate as early as possible all Chinese temporary visitors who have overstayed their visas. To this end, the President had instructed the Secretary of Foreign Affairs to take steps to carry out immediately and fully this decision.

The Philippine Government will take care of the transportation of the repatriates. To expedite their departure, the Philippine Navy will make available as many of its vessels as may be necessary for the purpose.

Referring to the efforts of the Department of Foreign Affairs to secure the cooperation of the Chinese Nationalist Government regarding the admission of these repatriates to Formosa, the President disclosed that should these efforts prove unavailing, he would take up the matter directly with Generalissimo Chiang Kai-shek. The President said that it was useless to talk about money because no amount of money could influence the Government's decision on this case. Besides, the President does not know of

any alleged money-lobby regarding the case, as alleged by the LP spokesman.

December 3.—WORN OUT apparently by the taxing trips he had made since Monday, flying to Mindanao and then to Quezon and Nueva Ecija, the President slipped out of Malacañang early this morning to seek rest and isolation at an undisclosed destination. Thus he kept away from people who had been frequenting the Palace either to demand political patronage or indulge in political intrigues.

However, in the evening the President returned to Malacañang and gave a state dinner in honor of Fernando Cardinal Quiroga y Palacios, the papal legate to the current Marian Congress in Manila.

In a brief speech, the President welcomed the Cardinal who he said "came from the very side of the Holy Father" to represent his Holiness in the celebration of the Marian Year.

"We are thankful that this celebration," he said, "should come when our faith and our freedom are increasingly threatened by Godless aggressors, and we are thankful that we have in our midst a man of God of such sterling qualities as His Eminence to help us in our difficulty."

The President said that Cardinal Quiroga came to strengthen "our spirits the disruption of which is the ultimate objective of the enemy." Then the President drank a toast to the health of Pope Pius XII.

In his response Cardinal Quiroga said that his mission here was one of spiritual love. He said that the Holy Father sent him to the Philippines as papal legate to the Marian Congress because the Holy Father wanted to show his special affection for the Philippines. The Cardinal expressed the hope that the Marian Congress would bring about the intensification of virtues among men and nations which will give them stronger faith in the word of God, confidence in His help which never fails, and universal love which is the main force that can give peace.

Cardinal Quiroga drank a toast to the well-being of the Philippines and the happiness of President Magsaysay.

At the close of the state dinner, the President gave the Cardinal a cane as a souvenir of his visit to the Philippines.

December 4.—EARLY in the morning, the President motored to the San Agustin church in Intramuros to act as sponsor at the wedding of Dr. Carlos Kipping, Jr., scion of the well known Kipping family of Camiling, Tarlac, and Visitacion Agana of Tarlac, Tarlac.

After the Manila Hotel breakfast for the newlyweds, the President returned to Malacañang. However, he did not receive any visitors, but worked on pending state papers.

The President suspended today Leyte Provincial Fiscal Alberto Jimenez pending the final termination of the investigation of the administrative case filed against him for alleged illegal disposition of firearms deposited in the fiscal's office as exhibits in criminal cases. The suspension of Fiscal Jimenez had been recommended to the Chief Executive by Justice Secretary Pedro Tuason, who had directed special Attorney Perfecto B. Querubin of his department to look into the case.

An investigation of the administrative case against Fiscal Jimenez revealed that out of more than 25 firearms deposited in the vault of the fiscal's office which were exhibits in criminal cases, only one home-made gun was left.

Assistant Fiscal Leon Roxas, Jr., stated during the investigation that he had seen about 17 firearms taken from the office of Fiscal Jimenez by two soldiers. This statement was substantially corroborated by Narciso Lumpas, clerk-messenger in the fiscal's office, and by Atty. Aresteles de la Paz, former record and correspondent clerk in the same office who had declared that some of the firearms which Fiscal Jimenez had ordered to be delivered to the soldiers had tags as exhibits attached to them. De la Paz further stated that Jimenez had not ordered him to keep official records of the delivery of said firearms, and of their payment in the sum of ₱425.

Jimenez' suspension was based on the following grounds:

(1) That there is strong *prima facie* case against Jimenez for illegal disposition of firearms deposited in his office as exhibits in criminal cases;

(2) That subordinate employees in his office are witnesses against him and public records in his office may be needed as evidence against him; and, therefore, his continuance in his position during the pendency of the investigation may not be conducive to complete freedom on the part of his subordinate employees in testifying as to the true facts of the case under investigation, and

(3) That it would be incompatible for Fiscal Jimenez to remain in office and be in control of the prosecution of criminal cases in Leyte while he himself is actually under charge for serious irregularities committed in office involving dishonesty.

The President this day directed Vice-President and concurrently Foreign Affairs Secretary Carlos P. Garcia to expedite the repatriation of 2,400 Chinese temporary visitors who have overstayed their visas, pursuant to the decision of the Cabinet on October 8, 1954. This step was taken as a measure to put an end to the long-standing problem of the 2,400 overstayed Chinese visitors and to the reports regarding an alleged attempt to legalize their stay in the Philippines for monetary considerations.

The President's directive was transmitted to the foreign affairs secretary by Executive Secretary Fred Ruiz Castro. Castro said in his communication that the Chinese Nationalist authorities might be informed that the Philippine Government was willing to assume the responsibility for the transportation of the repatriates to Formosa on board Philippine Navy vessels. He also said that the President desired to be informed of the result of the negotiations conducted by the Department of Foreign Affairs with the Chinese Nationalist Government on the matter, to enable the Chief Executive to decide on the next course of action that should be taken.

The President also directed today Malacañang Technical Assistant Sofronio Quimson to look into the case of a ten-year old girl, Carmelita Mendoza, who had been allegedly run over on Panaderos Extension a week ago by Danilo Vicencio, a Mandaluyong motorcycle patrolman.

The President learned of the case from a newspaper report which stated that Carmelita's father, Bonifacio Mendoza, a jeepney driver, had rushed to the Mandaluyong Town Hall to file a complaint but was told to return the next day (Sunday). News reports said that Patrolman Vicencio had been formally accused of serious physical injuries through reckless imprudence only Friday (December 3), a week after the accident.

In his telegram to Mandaluyong Mayor Bonifacio Javier, Quimson directed the mayor to look into the case and submit a report immediately so that proper action could be taken on the matter.

In the afternoon, the President went with the First Lady and their son Ramon, Jr., to the V. Luna Hospital, where they visited Mrs. Magsaysay's mother, Mrs. Lucila Banson, who was ill.

Upon his return to the Palace, the President again went over a thick pile of state papers.

December 5.— ACCOMPANIED by Commerce Secretary Oscar Ledesma and Archbishop Jose Ma. Cuenco of Jaro, the President motored to the Luneta early in the morning to hear the Pontifical mass said by Cardinal Quiroga.

After the mass, the President was approached by Cardinal Quiroga with whom he walked under the canopy from the altar. He was cheered with *Mabuhay* by thousands of devotees who heard the mass.

The President returned to Malacañang with Secretary Ledesma and Archbishop Cuenco, who had fetched him from Malacañang. The three had breakfast at the Palace.

Shortly before 12 noon, a group of Ateneo alumni headed by Claudio Teehankee, president of the alumni association, fetched the President and

accompanied him to the Ateneo gymnasium at the Loyola Heights, Quezon City. Still in high spirits, the honorary Ateneo alumnus planted a molave tree upon arrival which the Ateneans christened the "Magsaysay tree."

After the luncheon, the President delivered an extemporaneous five-minute address spiced with humor. He urged the Ateneo authorities to improve their curriculum by including a course in automobile mechanics "in order to improve your record in public service." Though the speech was all in light vein, the President was applauded several times.

Among those who accompanied the President to the Ateneo homecoming were Education Secretary Gregorio Hernandez, Jr., Health Secretary Paulino Garcia, Commerce Secretary Oscar Ledesma, OEC Administrator Alfredo Montelibano, Sen. Emmanuel Pelaez, and Rep. Jose Aldeguer of Iloilo.

The Chief Executive drew loud laughter when he said that upon entering the gymnasium he thought he was in Malacañang because of the presence there of Ateneo people who surround him every day. "I found out I was wrong when I noticed that they were all on time today," he said.

He ended his brief speech by saying that when he met an Ateneo professor five months ago, he asked why the course of artesian well drilling was not offered. "Your progressiveness was proven when the professor answered me that by the time the students would have graduated they would be working on air-conditioning units," he said.

In the evening, the President went again to the Luneta to lead the nations's officialdom in the solemn closing rites of the Marian Congress. He read the Act of Consecration at 8:50 p.m. Arriving at the altar at 8:20 p.m., the President walked briskly to the pew, escorted by Msgr. Rufino Santos, archbishop of Manila.

December 6.—THE PRESIDENT held a breakfast conference this morning with officials of CALTEX (Philippines) Inc. who explained to the Chief Executive the progress of their refinery at Bauan, Batangas. The CALTEX officials who called were W. S. Bramstedt, visiting president of CALTEX; J. P. Roxas, manager of the sales promotion; and C. Roesholm, president of the local branch. They invited the President to the inauguration of their refinery on December 11, 1954.

The president expressed his appreciation for the establishment of the multi-million-peso refinery in Bauan which, he said, set an example for foreign investors wishing to establish their plants in the Phillipines.

After breakfast, the President went to his executive office and received an Iloilo delegation headed by Sen. Fernando Lopez, Rep. Jose Aldeguer, Gov. Mariano Peñaflorida, and Mayor Dominador Jover of Iloilo City. The delegation requested the President to release public works funds for the reconstruction of public works destroyed by the recent typhoon.

The President telephoned Public Works Secretary Vicente Orosa to release whatever available funds had been earmarked for Iloilo for this purpose. Gov. Peñaflorida also asked for aid for the holding of the national interscholastic meet in Iloilo City. The President referred the matter to Education Secretary Gregorio Hernandez, Jr., who was also present.

Mayor Jover presented to the President a check for ₱641.80 as Iloilo City's contribution to the President's Liberty Wells fund campaign. Others present were Mayor Pablo Jinon of Liganes, Mayor Sinforoso Padilla of Cabatuan, and Dr. Ramon Orozco, president of the Asturias Sugar Planters' Association.

The President then received Budget Commissioner Dominador Aytona, who submitted a report prepared by the management consulting firm of Luis J. Kroeger and Associates, on the government-wide position classification and salaries survey now underway. The Wage and Position Classification Office, known as WAPCO, will base its recommendations on salaries for employees in the National Government upon a careful appraisal of work being performed within the government.

Mayor Monico Imperial of Naga City also called and requested the President to distribute some 1,000 hectares of land in a few towns sur-

rounding Naga City to the present occupants. He said that the lands had already been deforested. The President approved the request.

The President this morning heard nine Manila councilors solicit his assistance in averting an expected mayoralty veto of the city budget which they had passed recently. Headed by Board President Francis Yuseco, the councilors informed the Chief Executive of some of the main features of the new budget which provides for calibrated salary increases for policemen and insular teachers in the city.

The councilors also requested the return of Col. Napoleon D. Valeriano as chief of police in case the present chief finally decides to vacate his post. The aldermen explained that Valeriano had introduced many improvements during the few weeks he had served as MPD head.

Two large delegations numbering about 500 composed of workers in the government repair shops in Engineer Island and of farmers from Nasugbu, Batangas, also saw the President this morning. The Chief Executive had to go down to the Malacañang grounds to meet the delegation.

Headed by Pedro Dionisio, president of the Engineer Island Workers Union, the workers requested: (1) payment by government offices of outstanding obligations with the NASSCO; (2) giving the NASSCO priority in the awarding of job contracts by government entities, and (3) retirement benefits and gratuities for NASSCO workers.

The delegation explained that NASSCO laborers were at present working on rotation basis at an average of about six days a week per person because of lack of work in the government repair shop. If all the government jobs were awarded to them, the workers said, the NASSCO would perhaps be needing additional workers instead of laying them off.

Regarding the non-payment by government entities of their outstanding obligations with the NASSCO, the workers informed the President that jobs awarded to them were often delayed because of lack of funds with which to buy materials. If these entities paid promptly for services rendered to them, the NASSCO would have sufficient working capital with which to purchase needed supplies and pay its laborers.

The President told the workers that he would order all government offices and corporations to pay their obligations with the NASSCO. He said he would confer with Bernardo P. Abrera, NASSCO general manager, regarding their other requests.

Headed by Isidro Ilao, the Nasugbu farmers presented a petition requesting the expropriation of the Rojas estate in Batangas and its subdivision to tenants. The farmers' delegation also protested to the President against alleged unfair practices of the present administrators of the hacienda. The President promised to study the matter.

The Chief Executive received callers continuously from 8 a.m. to 12 noon. Visitors consisted of senators, congressmen, provincial governors, and municipal mayors who presented him with their respective problems.

A group of Liberal Party leaders saw the President for about 10 minutes. The group included Sens. Quintin Paredes and Macario Peralta, Jr.; Reps. Cornelio T. Villareal of Capiz, William Chiongbian of Misamis Occidental, and Felipe S. Abeleda of Mindoro Occidental; and Govs. Guideon Quijano of Misamis Occidental and Dominador Camerino of Cavite.

Speaker Protempore Daniel Romualdez accompanied a delegation of Leyte officials headed by Gov. Bernardo Torres. The delegation sought assistance for their typhoon-stricken province.

Other delegations who called were led by Reps. Emilio P. Cortez of Pampanga, Florencio Moreno of Romblon, and Gov. Federico Castillo of Mindoro Occidental.

Being insured with the GSIS, the President Monday morning received his GSIS Christmas dividend amounting to ₱58.12 from Mrs. Juanita Francisco, an employee of the Malacañang cashier's office. The President is one of the several thousand employees who will receive their shares of the more than ₱2 million dividend issued by the GSIS during the Christmas season this year.

The President signed today Administrative Order No. 86. removing Filemon F. Busa from office as chief of police of Butuan City. Busa was found guilty of misconduct in office by abandoning his post and of immorality.

The administrative charge of "official misconduct" was based on three counts: (*a*) electioneering, (*b*) leaving the territory of Butuan City without permission of the city mayor, and (c) betting in a cockpit.

The order stated that the electioneering charge had not been fully substantiated by the evidence. The order further ruled that the police chief's betting in a cockpit could not legally be made a basis for administrative action against him although it was not compatible with the dignity of his position.

However, Busa's departure from the territorial jurisdiction of his city without the city mayor's permission was held to constitute "abandonment of post." As a penalty, he was required to pay a fine equivalent to one month's salary.

On the charge of immorality, Busa was found to have become a widower in 1947, married again in the same year but a few weeks later left his second wife and live with another woman "openly and publicly as man and wife." The administrative order declared that Busa had proven himself "unfit to remain in the public service as a peace officer" and consequently ordered his removal from office.

Early in the afternoon, the President received Bernardo Abrera, general manager of the NASSCO, and Isabelo Tapia, supervising engineer, who discussed with the President matters regarding the NASSCO. Abrera told the President that he needed financial help amounting to around ₱160,000 to pay for the gratuities and retirement of employees under his office.

The President referred the matter to Financial Assistant Rodolfo P. Andal to see if the amount could be borrowed from the GSIS.

Later in the afternoon, the President authorized members of the Farm Machinery Club of the Philippines, Inc., to organize a committee to seek the best ways and means of improving present credit facilities and devising the right formula for an effective financing system to promote farm mechanization in the Philippines.

The President received the members of the club headed by Patrocinio Cordero, president, and Martin Duarte, vice-president, at the Malacañang ceremonial hall. The club, a civic non-stock corporation, is composed of technical men representing various farm machinery firms in the Philippines. The members told the President their club had been organized to help promote farm mechanization in the Philippines and the development of the country's agriculture.

The President discussed with the group various aspects of the activities of the club. He was pleased to receive assurance of the club that it was 100 per cent behind the Chief Executive's farm program and that it was ready to give its services free on the call of the President.

The club members informed the President that they had made him an honorary member of the club. They presented him with a framed certificate of membership.

December 7.— ACCOMPANIED by Rep. Angel Castaño of Manila, Mayor Arsenio H. Lacson, and City Engineer Alejo Aquino, the President visited Bangkusay and saw for himself the damage wrought on the shorelines by the sea. Immediately upon arrival, the President entered the narrow streets between houses and went to a place where he could get a better view of the shoreline. Hundreds of people mobbed the Chief Executive as he moved around among the small houses, many of which were already within the water's edge.

The President, after taking a look at the shoreline, asked City Engineer Aquino the approximate cost of sand and rocks to be piled on the shoreline so as to protect it from being further carried away by the sea water.

The President promised to give ₱1 million for the repair and construction of the shorelines in Bangkusay, Tondo, 100 meters of which had already been carried away by the sea water. He left Bangkusay after shaking the hands of the hundreds of people who had gathered around upon learning of the presence of the Chief Executive.

Before going to Bangkusay, the President received the delegates to the United Nations Community Development Conference now meeting in Manila and related to them how the country had succeeded in defeating Communism and the Huks. The delegates to the Conference were accompanied to Malacañang by Social Welfare Administrator Pacita Madrigal Warns. Most of them are from Asia and the United Nations.

"Our people, like other peoples of the world, will not embrace Communism if they have faith in their government and leaders," the President told the visiting delegates.

The President followed another heavy schedule of callers today. Visitors consisted mostly of tenants and farmers from the various parts of the country who requested government acquisition of big landed estates and their subdivision to occupants. The President received no less than 15 delegations at his executive office this morning.

A group of bare-footed farmers from Boguey, Cagayan, informed the President that they were being unfairly ejected by their landlords from the hacienda on which they and their fathers had been working for many years. Accompanied by Rep. Felipe Garduque, the group asked that the property be expropriated and distributed at cost to the present tenants.

Tenants of the Mori compound in Quezon City requested the sale to them of 4,000 square-meter area they were occupying. The tenants represented some 60 families who had been living on the compound since liberation. Owned before the war by a Japanese bicycle company, the property had been transferred to the Philippine Government after liberation. Families who had built homes on the compound have been paying rent to the Philippine Government.

Representatives of some 400 families which had been at the Manotoc subdivision in Gagalañgin, Tondo, for as long as 60 years, paying rentals to the private owners, sought the President's intervention in ejection proceedings instituted against them by their landlords. Accompanied to Malacañang by Rep. Angel M. Castaño, the tenants said they were being ejected in view of their failure to buy the property at allegedly unreasonable prices imposed by the landowners.

A group of ranking officials and employees of the NARRA presented ₱200 as their centribution for the Liberty Wells fund drive.

Officers of the Philippine Copra Exporters' Association called to protest against an ordinance of the City of Manila imposing a 1.2 per cent tax on copra exports.

Members of the Pangasinan Sugar Association headed by Jose P. Garcia also protested against the release by the Sugar Quota Administration of domestic sugar (B-sugar) to planters having export sugar allotments (A-sugar).

Officials of the Manila Concert Orchestra invited the President to its pre-Christmas gala concert on December 9 at the F.E.U. auditorium. Performers at the concert are Tsai Chi Kun, conductor; Ernestina Crisologo Jose, pianist; and Yeh Yee Tsai, soprano.

A women's delegation from the Pasay City Federation of Women's Clubs, headed by Councilor Francisco Herrera, called to recommend Mrs. Angela Teaño Pascual as assistant city fiscal of Pasay to take place of Corazon Villa Lantin, who died recently.

Representatives of the Musicians Guild in Manila headed by Alfredo Robles protested against the practice of Army orchestras of hiring themselves out for civilian social affairs.

The Philippine Association for the Advancement of Science, headed by Dr. Joaquin Marañon, presented a resolution pledging the support and cooperation of the organization to the President's five-year program of rural improvement.

Ramon Bagatsing, chairman of the blood recruitment committee, Manila chapter of the PNRC, headed a delegation which invited the President to officiate at the ROTC field day on December 19 during which the ROTC unit which has donated the most blood to the Red Cross will be decorated.

Mrs. Lourdes Sanchez requested the re-investigation of the case of her daughter, Milagros, who she claimed had been murdered in an hotel room in Pasay City in 1952. Mrs. Sanchez informed the President that investigators from the Pasay City police department had at the time pronounced her daughter's case as a suicide but that investigations subsequently made by the NBI had uncovered evidence of foul play. The President referred the case to the Department of Justice.

Acting Gov. Antonio Corpuz of Nueva Ecija sought and was granted the release of ₱100,000 out of his province's frozen pre-war deposits with the PNB. Gov. Corpuz said he would utilize the money for the reassessment of all under-assessed real properties in his province with the view to increasing the income derived from real estate taxes. With the reassessment project, the provincial government hoped to treble the incomes of its municipalities and make them less dependent on the National Government.

Among the last callers was a delegation of tenants from Jalajala, Rizal, who requested the expropriation of a 40-hectare estate for distribution to farmers. Accompanied by Rep. Serafin Salvador, the group also requested artesian wells and a school building for their town.

In the afternoon, the President thanked the officials and members of the Liberty Wells Association and all those who have contributed their share in making the Liberty Wells funds campaign a success, to the *merienda* which he gave in honor of the Liberty Wells Association officials and members at the ceremonial hall in Malacañang. The affair was attended by some 90 guests representing civic and social leaders of the community, including the foreign elements.

Teofilo Reyes, Sr., president of the Philippine Chamber of Industries and chairman of the campaign committee, said the new campaign had started and was running smoothly. He expressed hope that the campaign would be a success.

Arsenio N. Luz, executive director of the present campaign, reported that as of November 8, 1954, the previous campaign netted some ₱459,967.64. He said that in the new fund drive ₱32,000 in cash had already been received, plus ₱3,045 worth of pumps and pipes. He added that the assoication has received pledges in the sum of ₱254,277.80.

In his brief remarks, the President said that everybody now in the Philippines knows of the importance of the campaign being waged to raise funds to meet the artesian well requirements in all the barrios of the country in order to provide pure drinking water in the rural areas. He said that he was very much pleased with the public support being given to the campaign.

After the short ceremony, Chua Lim Ko personally presented to the President a check for ₱10,000 as his contribution.

The President arrived at the Malacañang ceremonial hall at past 4:30 p.m. He stayed with his guests for about one hour.

Revision of rules and regulations governing board examinations with the end in view of improving the standard of government examinations, was decided at a meeting between Executive Secretary Fred Ruiz Castro and the various chairmen of the different board examiners held at Malacañang this day.

At the meeting, Secretary Castro formed a working committee to study proposed amendments to laws and regulations on government examinations for submission to the forthcoming regular session of Congress. The proposed amendments will include the adoption of uniform procedures and requirements among the different boards and such other measures designed to improve the standard of government examinations. The

advisability of adopting uniform passing and qualifying grades was taken up at length at the conference which lasted more than two hours.

It was pointed out at the meeting that under existing regulations, the passing grade for some board examinations is 75 per cent while other examinations require only 70 per cent; that the qualifying grade for some board subjects is 50 per cent, while in others 60 per cent; that the examinee who fails is required to repeat all the subjects by some boards while other boards require him only to repeat the subjects in which he had failed.

The working committee appointed to draft a bill for presentation at the next session is composed of Andres Hizon, chairman of the board of examinations for civil engineers, as chairman, and the following members: Dr. Tranquilino Elicaño, chairman of the board of medical examiners; Benito Legarda, chairman of the board for chemists; Pedro Tinchay, chairman of the board for marine officers; Alfredo Velayo, chairman of the CPA board; and Ruben Ledesma, chief examiner of the Bureau of Civil Service.

December 8.—IN THE MORNING, the President held a breakfast conference with Speaker Protempore Daniel Romualdez, Executive Secretary Fred Ruiz Castro, Budget Commissioner Dominador Aytona, Reps. Carlos Tan and Alberto T. Aguja, Gov. Bernardo Torres of Leyte, former Senator Jose Fuentebella, Mayor Ildefonso Sinco of Tacloban City, and Mayor Domingo Ponferada of Tunga, Leyte. The President discussed with them problems regarding Leyte.

Because of the Cabinet meeting scheduled at 10 a.m., the President limited himself to very few callers.

L. C. Hayden, president of the Goodrich Internationl (Philippines), called to request early approval of the firm's application to establish a ₱12 million tire factory in this country. Accompanied by Nicasio and Celso Tuason, Hayden informed the President that the proposed factory would supply an estimated 70 per cent of the country's tire needs, save $6 million reserves yearly, and employ no less than 1,000 workers.

A delegation from Iloilo requested assistance for the province's Boys Town which had been damaged by recent typhoons. Accompanied by Mariano Peñaflorida, the delegation asked for ₱10,000 for the repair of damaged buildings in their institution for indigent children. Also with the Iloilo delegation were Mayors Sinforoso Padilla of Cabatuan and Pablo Ginon of Lizares, who solicited aid for their own damaged municipalities.

The President presided over the Cabinet meeting which lasted from 10:30 a.m. to 1 p.m.

The Cabinet approved today at its regular weekly meeting a recommendation of the National Development Company board of directors for open bidding for the purchase, lease, or operation on commission basis of the ocean-going vessels Doña Alicia, Doña Nati, and Doña Aurora. The ships at present are being operated by the De La Rama Shipping Lines on a commission basis. The firm's contract with the NDC expires July, 1955.

Under the NDC board's terms for the invitation to bid, the bidding will be limited to Filipino citizens or domestic entities with 100 per cent Filipino-owned capital. Bidders should have a paid-up capital and net worth of at least ₱1,800,000.

Besides, they will be required to put up a proposal bond of at least five per cent of the bid price for those offering to buy the vessels, or a bond of ₱100,000 for those bidding to lease or operate them on commission basis. A performance bond will also be required, amounting to ₱3 million in real property or a surety bond on the unpaid balance, plus a chattel mortgage, in case of outright purchase, or ₱500,000 for lease or operation on commission basis.

Minimum bid for purchase of the vessels shall be ₱18 million. Down payment shall consist of 10 per cent of the bid price, with the balance payable in not more than 10 years and thereafter at four per cent interest

on the balance. Minimum offer for lease will be ₱1,300,000 annually for the three vessels payable quarterly, while maximum offer to be entertained for operation of the fleet on commission basis will be 12 per cent of the gross income. (The present operator, De La Rama Steamship Lines, collects 17.5 per cent of the gross income.)

The lessee or operator must have at least ₱500,000 cash operating capital, set aside solely for operating the three vessels, during the lease period.

The Cabinet also approved a ceiling price for NARIC rice imported from Thailand of ₱.65 per ganta, wholesale, and ₱.70 per ganta, retail. Moreover, the Cabinet approved the ceiling prices for onions and garlic to be imported by the PRISCO with the end in view of stabilizing the cost of these food items. Ceiling prices set for onions was ₱.75, wholesale, and ₱.90, retail; and for garlic, ₱1, wholesale, and ₱1.20, retail.

A committee was created during the Cabinet meeting to study possible govermnent assistance to be extended to the abaca industry, in the light of falling prices for this commodity in the world market. Named chairman of the committee was Finance Secretary Jaime Hernandez, and members are Agriculture Secretary Salvador Araneta, OEC Administrator Alfredo Montelibano, RFC Chairman Eduardo Romualdez, and Ricardo Ledesma, a local abaca producer.

In the afternoon, the President treated newspapermen, photographers, and cartoonists to a *merienda*. Addressing the press representatives, he said he was happy to be with them because "I feel at home with you and I know you are at home with me."

The presidential guests were quick to express their gratitude to their host. The President posed for cartoonists and photographers.

The President signed today Administrative Order No. 88, creating a special committee on processing of backpay claims which will devise speedy and efficient methods of processing outstanding backpay claims. The Committee is composed of GSIS General Manager Gregorio Licaros, as chairman, with PCAC Deputy Chairman Nicanor Maronilla-Seva and Captain Antonio S. Vinluan, as members.

The committee is assigned to introduce innovations and such changes in the personnel assignment, operational set-up, and office policies and procedures of the backpay unit in the Bureau of the Treasury, Department of Finance, as will promote efficiency.

The administrative order enjoins all officials and employees of the backpay unit to extend full assistance and cooperation to the special committee. The order also directs the budget commissioner to furnish the committee with the necessary technical assistance.

The presidential committee is authorized to call upon any department, office, bureau, agency or instrumentality of the government, or upon any government employee or officer for any assistance it may require in the performance of its work.

The three-man group is required to submit partial reports and recommendations periodically, and then submit a complete and final report after six months on the general condition of affairs in the backpay unit before and after the application of the remedial measures they have applied.

Meanwhile, Malacañang announced that in response to thousands of complaints from backpay claimants regarding the slowness and procedures in the processing of backpay claims, the Office of the President conducted a survey into the causes of the delay and injustices complained about.

It was found out that with the present personnel and facilities of the Bureau of the Treasury, the job of attending to hundreds of thousands of backpay claimants appeared to be a most difficult task. It was pointed out that the Bureau of the Treasury, operating with its pre-war personnel, was not meant to handle such work.

To speed up the work in the processing of backpay claims, Malacañang detailed its own supervisor and personnel to the backpay divi-

sion of the Bureau of the Treasury. These employees will work directly under the President and the national treasurer temporarily until the findings and recommendations of the Licaros committee will have been made and implemented. The Office of the President is furnishing the Bureau of the Treasury with office facilities necessary to undertake the huge task. Under the joint supervision arrangement, Malacañang expects to diminish, if not avoid, the complaints from the provinces concerning alleged favoritism in the processing of claims.

Malacañang announced that henceforth all backpay claims would be processed according to the chronological order they are received, and under no circumstances will this order be changed. The numbers of the processed claims ready for release will be announced every day through the newspapers.

December 9.—THIS MORNING, the President had breakfast with Nguyen Manh Bao, Vietnamese minister of social affairs; Daniel Francis Baroukh, French liaison officer with the Vietnamese Government; and Social Welfare Administrator Pacita Madrigal Warns.

Minister Nguyen requested assistance from the Philippine Government in connection with the social welfare program recently launched by his government. He said that social welfare work had gained considerable headway as a weapon against communism in his country. At one point during the breakfast talk, the Vietnamese minister asked the President whether SWA Administrator Warns could be loaned to his government to help administer welfare work in his country. The President replied that Mrs. Warns had as yet many things to do here in connection with his program of rural amelioration.

After breakfast, the President received Acting Governor Andres Castillo of the Central Bank and ACCFA Administrator Osmundo Mondoñedo, who consulted him on problems of their respective offices.

The President instructed Castillo to relax the controls on the importation of capital goods so as to encourage the establishment of industries and ease the unemployment situation. He also instructed Col. Mondoñedo to widen the activities of the ACCFA so as to include intensification of rural development and enable farmers to produce more raw materials for local industries.

About 9 a.m., the President conferred with Col. Nicanor Jimenez, chief of the public affairs office of the Army, who reported on the progress of the social welfare work in Sulu under the auspices of the PACSUA (President's Action Committee on Sulu Affairs.) Created several months ago, the PACSUA had been given the task of extending the rural amelioration program of the government to Sulu as a means of solving the perennial peace-and-order problem in that province.

The President observed that the root cause of outlawry in the Moslem areas were conflicts arising from unsettled cases involving property ownership, as well as neglect on the part of past administrations to take action on grievances of the natives. The people's impressions of the government had heretofore been confined to tax collection and constabulary soldiers, he said. The President said that the Moros had come to regard government as an imposition since the Spanish regime, but that if these people were given a share of its services and benefits, they would learn to regard our government as their government and come within the folds of the law.

The President instructed Col. Jimenez to emphasize social welfare work in Sulu, particularly the installation of health facilities and good water supply in the rural districts. He said that he would apply the same principle to other Moslem areas if the PACSUA project would succeed in arresting violence in the bandit-ridden archipelago.

The President received callers at his executive office until 12 noon.

Martin Duarte of the Koppel (Philippines), Inc., presented the President with a copy of a book, *Operation, Care, and Repair of Farm Machin-*

ery, which his company had been distributing to various schools, colleges, and universities throughout the country.

Some visiting dignitaries called to pay their respects following their recent arrival in Manila. Among them were Sister Francis Joseph, president of the St. Mary of the Woods College in Indiana; and F. A. Mote, president of the Far Eastern Division of the General Conference of Seventh Day Adventists with headquarters in Washington, D. C.

Other callers consisted of congressmen, provincial governors, and municipal mayors who asked for aid for their respective localities. Some of these officials brought in delegations composed of political leaders or farmers who requested the subdivision of certain parcels of public lands for distribution to occupants.

Among the last visitors were Reps. Pio Duran of Albay, Lamberto Macias of Negros Oriental, Alberto Q. Ubay of Zamboanga del Norte, and Angel M. Castaño of Manila; Governors Bernardo Torres of Leyte and Francisco Infantado of Mindoro Oriental; and Mayors Emiliana Picardo of Dolores, Samar, Vicente Salcedo of Jasaan, Misamis Oriental, and Felix Dequinto of Salcedo, Samar.

The President has authorized the release of the following statement:

"When the press recently reflected a growing tendency toward public criticism of legislative missions abroad, the Executive Office verbally requested the President of the Party and the appropriate legislative offices to furnish, as it became available, information regarding the purpose of each mission, its cost to the Government, and the public benefit derived therefrom.

"Since the request was for information of official record and therefore to be presumed accessible to any citizen, it was not considered then—and it is not considered now—that such request in any way reflected upon the dignity or impaired the prerogatives of the Legislature.

"It was and continues to be the conviction of the President that the people are entitled to have their criticism answered by responsible sources. It was and continues to be the President's belief that the compilation and release of the information requested will satisfy the people who, after all, are the final judge.

"The President, both in his capacity as Chief Executive and head of the Nacionalista Party, urges that this demonstration of democratic responsibility be established as a norm of official conduct."

The President this noon received U. S. Rep. John C. Allen, Jr., who called at Malacañang to pay his respects following his recent arrival in Manila in the course of his tour of the Far East. During the call, the President took the opportunity to thank Rep. Allen for the invaluable help he was giving the Philippines in the U. S. Congress. Generally regarded as a great friend of the Philippines in Washington, the visiting American solon is author of the bill abolishing the excise tax on coconut oil. He has shown interest on matters affecting the Philippines.

The President presented Rep. Allen with a *camagong* cane as a souvenir. Mrs. Magsaysay also presented Mrs. Allen, who is traveling with the congressman, with a locally woven *piña* cloth. The couple was accompanied to Malacañang by John L. Bender of the U. S. Embassy in Manila.

December 10.—IN WHAT was officially described as a "cordial and fruitful" conference at breakfast in Malacañang this morning, President Magsaysay and Speaker Jose Laurel, Jr., reached complete understanding on the junkets issue. The Speaker acceded to the President's request for reports from congressmen on their return from trips abroad.

It was understood the Speaker gave in after the President had explained that he had asked for an accounting of both funds and accomplishments from the legislators only in order that he could defend them from public criticism.

Also present at the breakfast conference were Senate President Eulogio Rodriguez and Speaker Protempore Daniel Z. Romualdez.

After disposing of the Junkets issue, the President and the three top NP's agreed on the resumption of the weekly consultation talks between the executive and the legislative leaders.

The following joint statement was issued after the breakfast conference:

"President Magsaysay held a cordial and fruitful conference at Malacañang this morning with Senate President Rodriguez, Speaker Laurel, and Speaker Pro-tempore Romualdez, marking the resumption of weekly consultations between the executive and congressional leaders. The conference dwelt primarily on the Administration's program for the next session of Congress in January, with the conferees re-affirming the policy of continued emphasis on the development of the rural areas.

"Among other matters, the question of the various missions undertaken abroad by members of Congress was taken up. It was agreed that these missions, which include leaders of all existing political parties, will inform the President of their accomplishments at the appropriate time in order to enable him, as President of the Republic and titular head of the Nacionalista Party, to help the missioners report to the people on their work. The accounting of public funds spent in these missions will be undertaken in due time as a matter of course in accordance with the normal rules and regulations on the matter."

After the breakfast conference, the President attended the preview of a moving picture which featured him in Fort Wm. McKinley.

Then the President visited the remains of the late Herman Warns at the Funeraria Nacional and offered his condolence to Social Welfare Administrator Pacita M. Warns and ex-Senator Vicente Madrigal.

The President motored to the Funeraria Nacional with Sen. Emmanuel Pelaez, Press Secretary J. .V Cruz, Foreign Affairs Undersecretary Raul S. Manglapus, Defense Undersecretary Jose M. Crisol, and Technical Assistant Sofronio Quimson. Immediately upon arriving at the funeral parlor, the Chief Executive was met by ex-Senator Vicente Madrigal and was led to Mrs. Warns, who was sobbing in her bereavement. The President stayed for 10 minutes and then motored around Manila with Sen. Pelaez and Undersecretaries Manglapus and Crisol. They returned to Malacañang shortly before lunchtime.

Meantime, Executive Secretary Fred Ruiz Castro forwarded to Mrs. Warns a Cabinet resolution expressing the condolence of the Cabinet members for the death of her husband. The Cabinet resolution approved unanimously, follows in full:

"Resolved, That the Cabinet hereby expresses its profound regret for the untimely death yesterday of Mr. Herman Warns, and hereby conveys, individually and collectively, to Mrs. Pacita M. Warns, his widow, its sincere condolence for such an irreparable loss, while joining her in this, her hour of bereavement."

The President instructed this day Executive Secretary Fred Ruiz Castro to check on the compliance with the administrative order requiring a statement of assets and liabilities from government officials and personnel and to alert them on the requirement for filing new statements with the advent of the second year of the Administration. The President told Castro to determine whether all officials and employees required to file their statements have done so. He said those who have failed to file their year's statements be given a limited period of grace during which to do so under pain of suffering the penalty provided for in the administrative order if they persist in their inaction upon the termination of the deadline.

The first admnistrative order issued by President Magsaysay after his assumption of office required specified government officials and employees to file statements of their assets and liabilities. The order also directed that these statements be renewed at the beginning of every year of the administration.

Castro said the period for filing the second statement of assets and liabilities will begin with the New Year and expire January 31, 1955.

Among those who saw the President in the morning was a delegation from Bataan which asked for financial aid for the Abo-abo irrigation project in Balanga. The President directed the Department of Public Works and Communications to survey the irrigation project. Heading the delegation were Mayor Guillermo Arcenas of Hermosa and Rafael David, Balanga ACCFA president.

In the afternoon, the President went horse-back riding at Fort Wm. McKinley.

December 11.—SHORTLY after breakfast, the President and Mrs. Magsaysay motored to the Funeraria Nacional on Rizal Avenue to lead thousands of mourners at the burial of Herman Warns in the South Cemetery, Makati, Rizal, at 8 a.m. High government and diplomatic officials joined the cortage to the cemetery.

Warns, acting president and general manager of the Manila Gas Corporation, shot himself to death Thursday morning in his house at 1205 Otis, Paco, in apparent despondency over lingering heart and kidney ailments. He is survived by his widow, Social Welfare Administrator Pacita M. Warns, and only son, eight-year-old Vicente "Bu", who is a second grade student at the La Salle College.

The President inaugurated this morning the ₱60 million CALTEX refinery plant in Bauan, Batangas, before a large crowd of high government officials and Batangueños. The Chief Executive said the establishment of the refinery was "an encouraging and stimulating demonstration of the faith and confidence of American investment in the stability and future of this Republic."

The President came in a four-seater plane and landed on an auxiliary airstrip in Bauan at 11:20 a.m. Speaker Jose Laurel, Jr., Gov. Feliciano Leviste, and Rep. Apolinario Apacible headed a big welcoming crowd at the airstrip.

Upon alighting from his Cessna plane, the President expressed his gratitude for the enthusiastic greetings of the crowd. With him in the plane were Brig. Gen. Eulogio Balao, vice-chief of staff, and Maj. Emilio Borromeo, presidential aide.

The President motored to the refinery in Bauan with Speaker Laurel, Gov. Leviste, and Rep. Apacible. They were welcomed at the refinery by officials of the CALTEX, headed by William Frederick Bramstedt, president of CALTEX International, and Christian Roesholm, president of CALTEX (Philippines), Inc. Bishop Alejandro Olalia of Lipa City and American Ambassador Raymund A. Spruance were also at the refinery to greet the President.

After taking a cup of coffee in the refinery's office, the President inspected the CALTEX hospital. Hospital Chief Jose Leviste took him to the operating room, the X-ray room, and other departments. Then, the President toured the refinery compound, accompanied by CALTEX officials.

In his brief after-luncheon remarks, the President said that the establishment of the refinery plant was a significant milestone in the economic development of the country and a "logical result of the traditional friendship between the people of the Philippines and the people of America."

The Chief Executive said that the multi-million-peso venture was an excellent example of how the East and the West could cooperate with mutual benefits. He added that the construction of the refinery plant was not a threat of exploitation but rather a welcome opportunity for gainful employment for many of our people and was a vigorous stimulus to those of our own industrial efforts which it would serve.

He added: "It is a striking justification of the wisdom of this nation's policy of finding in Western friendship a means of wholesome cooperation, rather than destructive rivalry."

The President congratulated the CALTEX officials for their farsighted and progressive policies. At the same time, he particularly commended the men who, working with Filipinos, have brought these policies from the planning stage into impressive reality.

President Magsaysay expressed the appreciation and welcome of the Filipinos to the CALTEX officials for the establishment of their plant. He said, "I hope you will carry back to your own people a vivid impression of the hospitality they will find, should they decided to follow the trail you have blazed."

During the inauguration ceremonies, the President awarded the Philippine Legion of Honor to Bramstedt and Roesholm "in recognition of their services to the Philippines and their sincere interest in the well-being of the Filipinos. President Magsaysay personally pinned the medal on Bramstedt and requested Speaker Laurel to pin the other medal on Roesholm. Lt. Col. Pastor Garcia read the citation for the awards.

The President then pushed a button which set the refinery's whistle blowing, symbolizing the official inauguration of the ₱60 million plant.

President Magsaysay returned to Manila at almost 4 p.m. Upon arrival at Malacañang, he received Fernando Cardinal Quiroga, who called on the eve of his departure for Spain. Msgr. Egidio Vagnozzi, papal nuncio, accompanied the Cardinal to Malacañang.

December 12.—PRESIDENT MAGSAYSAY this morning heard mass with members of his family at the Malacañang chapel.

At 8 a.m., he had breakfast with Dr. W. C. James Yen, president of the International Committee on Mass Education Movement, a non-governmental entity with headquarters in New York City. Also at the breakfast table with the President was Sen. Tomas Cabili. During the breakfast which lasted about 35 minutes, the President outlined his over-all plans on social amelioration aimed at improving living conditions in rural communities throughout the country.

Dr. Yen was impressed by the President's determination to carry out this program during his administration. He said that the Philippines is probably the only country in Asia which has launched such a program with nation-wide scope and application. Dr. Yen observed that although many Asian countries have adopted some sort of rural improvement programs, these programs actually operate only in spots or in limited area. He said the Philippines is perhaps the first country in Asia to adopt what he called the "totality concept"—a clear, workable program which embraces the whole nation.

After breakfast, the President retired to his study where he pored over a bunch of telegrams and correspondence received from provincial and municipal officials all over the country. Then he had his aide, Maj. Borromeo, put a stack of pending papers into a portfolio and left to board the Yacht *Pagasa* for his first vacation in many weeks.

Malacañang aides believed the President will rest for one or two days.

The President issued instructions today to the Labor Department, the Constabulary, and the chemical warfare branch of the Armed Forces to conduct immediately a check of all fireworks factories to determine their safety conditions and degree of compliance with the rules and regulations governing their operations.

In separate directives to Labor Secretary Eleuterio Adevoso, Philippine Constabulary Chief Brig. Gen. Florencio Selga, and Camp Murphy headquarters, the President said he wanted a report within one week on, which factories deserved to be closed and which could be permitted to continue operating without presenting hazards to life and property.

The Chief Executive took these steps in the wake of a series of blasts in fireworks factories which have cost several lives. The most recent was the explosion of a factory in Sta. Maria, Bulacan, which claimed 18 lives. The President suggested that the check look into such factor, as the location of fireworks factories, to insure that they are reasonably isolated

to minimize danger; the materials they use; the safety devices applied to minimize risk; and the reported employment of women and minors.

The President instructed the agencies concerned to be firm in shutting down factories with unsatisfactory safety conditions. At the same time, he said factories with satisfactory safety ratings and which have complied with all laws and regulations should not be prejudiced in their operations. He pointed out that this is the holiday season, when fireworks factories normally enjoy the largest volume of business during the year, and those depending on fireworks manufacture for their livelihood should not be unduly disturbed, provided their operations are up to standard in all respects.

December 13.— AFTER a hectic cross-country trip which had brought him from Lanao to Nueva Ecija, the President stayed cruising on board the yacht *Pagasa* the whole day for much needed rest, presumably to prepare for another busy week. The yacht was reported to be off Zambales this day.

A number of politicians and other callers came to Malacañang as usual in the morning, but they were told that the President was out of town.

The President returned to the Palace at 8 o'clock in the evening.

December 14.— FRESH from a two-day cruise in Manila Bay, the President ploughed the whole day this day through a backlog of state papers. He did not receive any callers except Executive Secretary Fred Ruiz Castro, Ambassador Felino Neri, and Press Secretary J. V. Cruz.

Secretary Castro discussed with the President some state papers which required presidential decision, while Ambassador Neri conferred with the Chief Executive on the long drawn-out negotiations on the Philippine demand for reparations from Japan, following reports that former Diet Member Takizo Matsumoto, Premier Ichiro Hatoyama's deputy Cabinet secretary, is scheduled to arrive in Manila today.

Neri was instructed by the Persident to start reparations talks on the basis of the Hernandez report.

The President tackled other pending state papers in the afternoon.

President Magsaysay revealed today that he had already transmitted through Senator Laurel his personal congratulations and commendation to each member of the Trade Mission and its technical staff.

The President expressed his appreciation of the Mission's work and accomplishments in a telephone conversation with Senator Laurel last Friday. The Senator, as chief of the Mission, had telephoned to Malacañang to report the substance of the final agreement reached by the two panels. Stating the concurrence of the other members of the all-party Mission in recommending acceptance, he requested permission to do so on behalf of the Government. On the basis of Senator Laurel's report and the Mission's recommendation, the President authorized signature of the agreement and asked that his thanks and congratulations be conveyed to each participant in the lengthy and difficult negotiations.

Commenting on the Mission's accomplishment today; the President stated:

"Our Trade Mission to Washington has concluded many weeks of arduous negotiations, resulting in a proposed revision of our trade relations with the United States which they consider substantially to our advantage.

"From reports I have received, it appears that the negotiations were carried out in an atmosphere of mutual cordiality and sympathy, but were protracted by the many mechanical and technical obstacles which had to be overcome. It is a tribute to the firm dedication of our negotiators to the national interest that so many of those technical problems were resolved in our favor.

"The new agreement now must be considered for approval by our Congress as well as by the Congress of the United States. Its complete text shortly will be made available for study and discussion. I am con-

fident that it will be given the same sober, judicious, and non-partisan consideration that characterized the effort of our negotiators."

December 15.—PRESIDENT MAGSAYSAY and the gentlemen of his Cabinet stood for one minute when widowed Social Welfare Administrator Pacita Madrigal-Warns entered the Council of State room for the Cabinet meeting. It was a dramatic display of gallantry to mark the entry of their lone sister in the official family, exactly seven days after Mrs. Warns had been widowed.

Mrs. Warns, still in deep mourning over the sudden death of her husband, was reported touched by the occasion, and sobbed into tears. She cried, observers said, in deep appreciation for the sympathy shown her by her colleagues on her bereavement.

The President presided over the Cabinet meeting from 10:10 a.m. to 12:20 p.m.

The President and his Cabinet approved today the issuance of a total of ₱22 million for the ACCFA to be given out as loans to small farmers.

Eighteen million pesos of the total amount will be used by the ACCFA to issue out certificates of indebtedness to guarantee loans to producers against quedans at the rate of 80 per cent of the market price. The other ₱4 million will be used to finance loans to farmers for carabaos, plows, harrows, and other tools of production.

As approved by the Cabinet, the ACCFA will give out a loan of 80 per cent of the market price of palay to the small farmers who deposit their rice in the ACCFA warehouses to finance production needs. The money will be paid by the farmer as soon as his palay is sold by the ACCFA for him. This program is intended to prevent small rice producers from being victimized by unscrupulous traders who are actively trying to control the milling and marketing of palay.

The release of the ₱22 million was requested by Acting ACCFA Administrator Osmundo Mondoñedo, who told President Magsaysay and the Cabinet that the money was necessary to "create an orderly marketing of palay and rice, favorable to both producers and consumers."

The ₱18 mililon for loans to farmers who deposit their palay in the ACCFA warehouses will be released in partial amounts upon presentation of the certificates of indebtedness duly signed by the administrator of the ACCFA.

The release of the funds in the amounts as needed by the ACCFA has the written concurrence of the secretary of finance, the secretary of agriculture and natural resources, the president of the Philippine National Bank, and the acting governor of the Central Bank.

The other ₱4 million will be invested by the ACCFA as production and farm improvement loans for small farmers and facility loans for cooperative associations. Another ₱4 million had been previously approved and is presently invested by the ACCFA as production and farm improvement loans to small farmers.

According to ACCFA Administrator Mondoñedo, the ACCFA has provided 15,000 carabaos to small farmers payable in three years. He said that the requests for carabaos exceeded 50,000 heads. Mondoñedo explained that the small farmers used to pay 12 to 15 cavanes of palay for the use of one carabao. He said that under ACCFA's financing program, the farmers will pay less and in three years they will own the carabao.

He also said that from 1952 up to October 31, 1954, the ACCFA had already released a total of ₱14,260,123.39 covering four kinds of loans to small farmers.

The Cabinet upon representation of Mondoñedo authorized the ACCFA to take over the building now occupied by the Office of Economic Coordination and use it for its offices. This was justified by the expanding operations of ACCFA which requires more office space to enable it to carry on its work efficiently. The OEC will move over to the CEPOC building in San Nicolas. It will occupy the floor formerly assigned to the PHILSUGIN which will be moved to another location.

The Cabinet during its two-hour meeting this day made a final decision on the question of impounded shipments of onions and garlic now in the custody of the Bureau of Customs and adopted the following policy:

(*a*) With regard to onions, the PRISCO with the consent of the consignees or importers of the onion shipments, will take over possession of all the impounded onions and sell them to wholesalers and retailers at regulated prices. Future shipments of onions will be subject to the Cabinet policy of seizure, forfeiture, and redemption at appraised value in cash. The PRISCO was authorized to continue importing garlic and onions as the public need arises.

(*b*) With regard to garlic, the shipments now impounded in the Bureau of Customs will be seized, forfeited, and redeemed at appraised value in cash. The Cabinet policy of seizure, forfeiture, and redemption at appraised value in cash will be enforced in the case of future shipments of this commodity. The PRISCO was authorized to continue with the importation of garlic as the public need arises.

(c) The PRISCO was authorized to import potatoes as the public need arises.

Upon the recommendation of Health Secretary Paulino Garcia, the Cabinet authorized the Central Bank to undertake the sale of ₱1 million worth of bonds for the construction of the North General Hospital, pursuant to the provisions of Republic Act No. 1000. This amount is in addition to the ₱1,500,000 already appropriated for the construction of this hospital in Republic Act No. 948.

The Cabinet authorized the Dixie Leaf Tobacco, Inc. (Manila Branch), to import ₱2 million worth of Virginia tobacco approximating two million kilos on a non-dollar remittance basis. The importation of this tobacco was approved subject to the understanding that the proceeds would be invested in an agricultural enterprise, subject to the provisions of Philippine laws and provided that local manufacturers would agree to import their leaf tobacco requirements through the company.

Cabinet approval followed recommendations made by Agriculture Secreary Salvador Araneta and ACCFA Administrator Osmundo Mondoñedo. Mondoñedo said that the importation would conserve dollars, develop the local Virginia growing industry, and give added employment to the people.

The Cabinet approved the recommendation of OEC Administrator Alfredo Montelibano that the GSIS advance the amount needed for the pensions of retired employees of the Manila Railroad Company up to June 30, 1955, amounting to ₱531,122. The Cabinet was informed that the payment of the employees of the MRR concerned would start immediately.

Before the Cabinet meeting, the President received a number of callers. Among those who saw the President were Oscar Arellano and Lauro G. Marquez, members of the board of directors of the Manila Hotel. The two callers accompanied to the President by OEC Administrator Alfredo Montelibano were congratulated by the President for effecting some improvements on the Pines Hotel in Baguio City. Montelibano took up with the President plans of the Philippine Long Distance Telephone Company to expand its facilities.

Other callers were Maj. Gen. Robert M. Cannon, JUSMAG chief, Reps. Jose Aldeguer and Ricardo Y. Ladrido of Iloilo, and Pio Duran of Albay.

In the afternoon, the President inducted Conrado Estrella as acting governor of Pangasinan during the absence of Gov. Juan de G. Rodriguez. He also inducted Elias Cabangon as member of the provincial board of the province.

A large delegation of more than 500 persons, headed by Sens. Cipriano Primicias and Alejo Mabanag and all Pangasinan mayors attended the Estrella induction rites. Estrella was given a cocktail at the residence of Manuel J. Gonzalez this day.

President Magsaysay today signed Administrative Order No. 89, directing the committee created under Administrative Order No. 82, headed by Director of Planning Anselmo T. Alquinto, to study the feasibility of

establishing an industrial zone outside the City of Manila. The President directed the committee to make this study in order to pave the way for current expansion of industrial activities.

The President was prompted to give the new instructions owing to favorable conditions which have contributed to the increased inflow of foreign capital into the Philippines and the stepped-up industry of the nation. Under the previous administrative order, the same committee was created to study the conditions in Intramuros in connection with city planning and improvement. The Committee members are Andres O. Hizon, Juan Nakpil, Oscar Arellano, and Carlos Da Silva.

In commemoration of the first postage stamp issued 100 years ago, the President also signed today Proclamation No. 99, declaring the period from December 26 to 31, 1954, as "Philatelic Week." The President also signed Proclamation No. 100, designating the last week of February of every year as "Philippine Industry Week" instead of the period from March 15 to 21 fixed under the previous proclamation issued last year.

The Chief Executive moreover signed Executive Order No. 85, establishing the Manila Port area as a "Rat Proof Building Zone." The executive order states that the construction of only "rat proof" buildings made of highly durable materials will be allowed within the designated area.

The Executive order also prohibits the maintenance of fowl or other domestic animals within the zone because the feed for these animals would "serve as food for the rodents as well." The preparation, cooking, and selling of food within the area shall be authorized only in designated buildings, and the construction site shall be determined by a special committee.

The rat proof zone designated by the order includes the Manila South Port district and the Manila North Port district comprising the areas bounded on the south by the 25th Street; on the east by the Bonifacio Drive in the South Port district and extending to Dewey Boulevard extension in the North Port district and as far north as the Reclamation of the North Port district; and on the west by the Manila Bay.

December 16.—PRESIDENT Magsaysay received numerous callers, morning and afternoon today including American businessmen, accountancy flunkers, and the usual coterie of politicians. He started receiving callers at his executive office about 8:30 a.m. after holding a series of conferences with various Malacañang assistants over pending routine matters.

A composite delegation representing all civic organizations in the country including the Jaycees, Lions, Rotarians, and the Women's Civic Assembly composed of some 41 women organizations, called to invite the President to the testimonial dinner they are giving in his honor on December 30, on the occasion of his first anniversary in office. The delegation explained that the affair would be the first of its kind ever to be undertaken jointly by the civic organizations. It would be an spontaneous manifestation of their faith and confidence in the administration and at the same time a renewal of their pledges of support and cooperation.

The President, in accepting the invitation, said that this splendid gesture would serve to encourage him to continue doing what he thought was best for the country.

Members of the Roxas Memorial Commission headed by Public Works Secretary Vicente Orosa, chairman, also saw the President in connection with the site of the projected memorial in honor of the late President Manuel Roxas. The group included Mrs. Trinidad de Leon-Roxas, the widow of the late President; FEU President Teodoro Evangelista; Commerce Secretary Perfecto E. Laguio; Pilar Martinez Normandy; Pedro Ocampo; and Feliciano del Mundo.

Frank Matsumoto, head of the visiting Japanese baseball team, called to pay his respects. He was accompanied by Kiyoshi Myahara, president of the Baseball Federation of Japan; Sadao Kume, director of the Yawata

Iron and Steel Co., Ltd.; Jyunji Kanda, secretary of the Japanese Baseball Association; and Jose Moreno, charge d'affairs of the Philippine mission in Japan.

Other morning callers included U.S. Ambassador Raymond A. Spruance, Sen. Mariano J. Cuenco, Alfonso Sycip, Cipriano Cid, ex-Justice Pompeyo Diaz, and Manuel Barredo.

The President this noon received J. N. Vaughn, local representative of the Firestone International, who informed him that his company planned to establish a multi-million dollar tire factory in the Philippines. Vaughn said that his firm intended to invite small Filipino capitalists to subscribe to about 25 to 30 per cent of the capital stock of their projected factory.

President Magsaysay expressed gratification over the plans of two American tire companies to establish big factories in the Philippines in response to his invitaton for foreign capital to invest in this country.

Last week, the President received L. C. Hayden, president of the Goodrich International (Philippines), who had filed an application to put up a ₱12 million tire factory here. Hayden had informed the President that their factory would supply an estimated 70 per cent of the country's needs, save ₱6 million worth of yearly dollar reserves, and employ no less than 1,000 workers.

The President said that the decision of two of America's biggest rubber manufacturers to establish branches in this country was a sign of growing confidence of foreign industrialists in this Republic.

Earlier in the morning, the President received Dr. Cornelius Haggard, Dr. Arnold Weston, and Robert Kellum of the Voice of America, who requested the President a brief message to the people to be broadcast all over the United States. The radio executive informed the President that Americans have a profound respect for him and the work he is doing here.

The President received numerous callers until past 1 p.m. The callers included senators, representatives, governors, and provincial delegations.

A delegation from San Jose, Batangas, headed by Mayor Bonifacio Masilungan, requested financial aid for the construction of the municipal water system. The President told the mayor to submit an estimated cost of the construction before aid could be given.

Another big delegation came from Sto. Tomas, Pampanga, headed by Mayor Patricio Gomez. Mayor Gomez informed the President of the controversy on the location of the municipal government. The Chief Executive told Technical Assistant Sofronio Quimson to go to Sto. Tomas to look into the controversy.

Three members of the CPA petitioners, who had failed in the previous controvercial CPA examinations also called and personally aired their complaint to the Chief Executive. After listening to the CPA complainants, who came with Gonzalo Robles, secretary of the Board of Examiners, the President said that he would create a three-man committee to render a final decision on the matter. The committee would be composed of Secretary of Finance Jaime Hernandez, as chairman, and Civil Service Commissioner Jose Gil and Gonzalo Robles, as members. The flunkers who saw the President were George Yap, Gregorio Gonzales, and Menardo Jimenez.

Rep. Domocao Alonto accompanied Lanao Provincial Board Member Husain Usman, who requested national aid for his province. The President promised that he would send the requested amount to the provincial governor.

Rep. Ferdinand Marcos of Ilocos Norte was praised by the Chief Executive for his services rendered as Philippine delegate to the "Colombo Plan Conference" recently held in Ottawa, Canada. Rep. Marcos came with Rep. Augusto Francsico of Manila to report on their work in the conference.

Another caller was Dr. Kenneth Parsons, a professor in the University of Wisconsin and an authority on land tenure, who was accompanied

to Malacañang by Mrs. Lydia Mondoñedo of the Agricultural Tenancy Commission. Dr. Parsons is on a tour of the Far and Middle East to look into the existing tenancy conditions.

The student council of the University of the Philippines also called on the President and requested financial aid for the construction of a dormitory in the U. P. The U. P. student council delegation headed by its president, Elias Lopez, was accompanied by Ignacio Debuque, Jr., chairman of the consultative body on student affairs.

Other callers of the President included Senate President Protempore Manuel C. Briones, Reps. Emilio Cortez of Pampanga and Ramon Tabiana of Iloilo, Gov. Francisco Infantado of Mindoro Oriental, and Mayor Porfirio Pinuela of Zarraga, Iloilo.

The President in the morning received the accomplishments report of the Judge Advocate General's Office which he had commissioned to look into the tenancy problems upon his assumption of office.

The report, submitted to the President by Lt. Col. Guillermo Santos of the JAGO, cited among other things that several cases involving 2,537 tenants and 252 landlords had been amicably settled by the JAGO. The JAGO enforced or implemented orders, decisions, and arbitration awards of the Court of Industrial Relations affecting 994 tenants and 47 landlords. It also gave legal advice and assistance to 3,136 tenants and 246 landlords.

The President commended the JAGO personnel for their service in "restoring the confidence of the people in the Government." According to Lt. Col. Santos, the accomplishments of the JAGO and the encouraging attitude of the people is a great psychological victory of the Government in combating subversive activities, especially in the rural areas.

In the afternoon, the President told Lands Director Zoilo Castrillo to take immediate steps for the acquisition of the 94-hectare Catong estate in Macrohon, Leyte, for subdivision and resale to the tenants.

The President had received reports of trouble brewing in the hacienda resulting from overseer-owner misunderstanding. The tenants had petitioned Malacañang to help them acquire the land.

Malacañang was informed that the property could be acquired either by expropriation or by a negotiated sale. For this purpose, the tenants had already remitted to Malacañang the sum of ₱4,725 to cover the requirement deposit of 10 per cent in case the property is expropriated. The property is assessed at about ₱40,000.

According to Director Castrillo, an understanding had been reached with the owners of the hacienda for a negotiated sale in the sum of ₱60,000. The President told Castrillo to resolve the problem in the most expeditious manner.

The President was pleased to learn from Director Castrillo that the Bureau of Lands had already issued some 28,000 patents from January this year up to the present time. This showed a tremendous increase over the annual issuance of from 2,000 to 3,000 patents in the past years. He said that his office was working full blast to realize the target of 50,000 patents issued annually.

The President also received Economic Coordination Administrator Alfredo Montelibano and NARIC General Manager Juan O. Chioco, with whom he took up matters affecting the NARIC.

Chioco informed the President that the NARIC's efforts to purchase palay from the remotest barrio was being successfully prosecuted. He said that government trucks went out to the far barrios to purchase palay from small farmers at government prices depending on the distance of the locality, but not lower than ₱7.00 a cavan. He said that his agents accepted from the farmers palay even in amounts less than one cavan. This he added, was being done to prevent the palay from falling into the hands of Chinese middlemen who made purchases at very low prices. The President congratulated Chioco for his work.

The President moreover received Tito Sevilla, chairman of the CEPOC, who took up with the President matters pertaining to his corporation.

Another caller was Governor Felipe B. Azcuña of Zamboanga del Norte, who also took up matters regarding his province.

December 17.—THE PRESIDENT this morning received a large delegation from Bulacan which presented him with checks for ₱6,800 and ₱11,937.34 as additional contributions of the province to the Liberty Wells and the Peace and Amelioration fund campaigns, respectively.

Handed by Gov. Alejo Santos, this morning's check for ₱11,937.34 brought to a total of ₱16,500 the contribution of Bulacan to the peace fund drive, only ₱3,500 short of the quota assigned to the province for the current year. The Bulacan governor said the provincial campaign was still going on and expressed confidence that his quota of ₱20,000 would be fully covered before the end of the year.

Other members of the delegation included Reps. Rogaciano Mercado and Erasmo Cruz, Board Members Serafin Gunigondo and Tomas Martin, Provincial Treasurer Pio Advincula, and Mayors Anastacio Jose of Guiguinto and Alfonso Reyes of Plaridel. During their call the group also submitted requests for financial assistance for the construction and repair of roads, schoolbuildings, and health centers.

The President started receiving callers at 10:30 a.m. He spent the earlier part of the morning in conference with various Malacañang assistants on pending state matters in his desire to clear his desk before the Christmas holidays set in.

Finance Secretary Jaime Hernandez saw the President to defend himself against the scatching attacks of Congress leaders who had demanded his resignation.

Col. Andres Soriano also saw the President and presented him with the first copy of *The Samaka Guide to Supplementary Subsistence Farming* sponsored by the San Miguel Brewery as a contribution to the Administration's rural development program. He was accompanied by Colin M. Hoskins, author of the book.

Jack Manning of the Manila Trading Company called to inform the President about plans of the Ford Motor Company to establish an assembly plant in Manila.

Prof. George Paul, director of the Labor Management Institute of Connecticut University, paid his respects. He was accompanied by Labor Secretary Eleuterio Adevoso and Profs. John J. Glynn and Bertran Gottlieb, adviser and assistant adviser, respectively, of the Institute of Labor Administration in the University of the Philippines.

A delegation of vegetable farmers from Atok, Benguet, Mt. Province, invited the President to visit their vegetable farms along the Benguet mountain trail which they said is the major source of vegetable supply for Baguio City. This group was accompanied by Sinai C. Hamada, ACCFA representative in the Mt. Province.

Other callers were Sen. Mariano J. Cuenco, Rep. Francisco Ortega of La Union, Finance Secretary Jaime Hernandez, and Col. Andres Soriano.

With President Magsaysay presiding, the Council of Leaders at a luncheon meeting this day unanimously agreed to extend diplomatic recognition to Laos and Cambodia and to send a trade and goodwill mission to Viet Nam.

In a two-hour meeting that lasted from 1 to 3 p.m., the Council also:

(1) Expressed the sense that the Philippines should maintain a separate mission to the Vatican, leaving it to the Executive Department to implement this decision in accordance with law;

(2) Agreed to withhold comment on the trade revision agreement recently concluded in the United States until the return of the all-party mission headed by Sen. Jose P. Laurel.

The mission to Viet Nam will be composed of a representative each from the Nacionalista, Democratic, and Liberal parties, to be recommended by the respective parties themselves, as well as of technical personnel to explore the possibilities of trade between the Philippines and Viet Nam.

At the Council meeting, it was recalled that the Vietnamese had been sending goodwill missions to the Philippines in an effort to cultivate the closest relations between the two countries. It was felt that the Philippines should reciprocate.

In the discussion on the maintenance of a separate Philippine diplomatic mission to the Vatican, the unanimous choice for the post was former Chief Justice and Ambassador to Spain Manuel V. Moran.

President Magsaysay requested the all-party Council to declare and observe a moratorium on comments on the trade agreement recently concluded between Sen. Laurel and American Panel Chief James M. Langley in Washington until the return of the Laurel mission to the Philippines. In making this request, the President pointed out it was only fair to do this until the mission members have returned and were in a position to explain their work.

The President further observed that the agreement can be discussed and viewed in its proper perspective only when the entire story of what happened during the negotiations has been told. This, he added, will have to await the return of the missioners. The President admonished that premature attacks on the agreement might furnish ammunition to those who may wish to see the agreement, or portions thereof, killed in the U.S. Congress.

Sen. Cipriano Primicias and Rep. Cornelio T. Villareal, chairman of the Liberal Party's new governing committee, seconded the President's plea which was approved thereupon unanimously by the Council.

Sen. Quintin Paredes, who was one of two Liberal Party members with the Laurel mission, explained that contrary to popular impression, the Liberal Party has not attacked the agreement. He said criticisms of the agreement were put in the mouth of Liberal Party leaders without their consent.

"The party has not made any stand on the agreement," he added. "Some comments were put into our mouths without our knowledge or consent, and the trouble was that when we made clear that we had never attacked the agreement, we were just as roundly accused of having reversed ourselves and changed our stand."

In the afternoon, Executive Secretary Fred Ruiz Castro, on behalf of the President, welcomed the members of the four amateur baseball teams which will compete in the First Asian Baseball Championship games in Manila beginning Saturday, December 18, and lasting until December 26.

Secretary Castro said that in view of a meeting which the President had this noon with the Council of Leaders which had kept him at work until past 3 p.m., the President could not personally welcome the visting teams. In welcoming the teams for the President, Castro expressed the hope that this athletic competition among the representatives of Japan, South Korea, Nationalist China, and the Philippines would serve to promote closer relations among these Asian countries.

The four baseball teams which called were headed by Kiyoshi Kiyahara (Japan), Hong Chik Rhee (South Korea), Su Chia Ho (Nationalist China), and Estanislao R. Lopez (Philippines). The baseball players, bearing the emblems of their respective countries on their coats, lined up around the table at the ceremonial hall and were greeted individually by Secretary Castro on behalf of the President.

Afterwards, the heads of the delegations of South Korea and Japan presented a gift and a pennant respectively for the President which were received by Secretary Castro. The teams were entertained at merienda.

December 18.—MALACAÑANG announced today that President Magsaysay is not planning any Cabinet re-shuffle. Denying reports about alleged plans of a Cabinet re-shuffle, Malacañang said the President deplored these reports because they tended to undermine morale and hamper efficiency in the various departments. The President is satisfied with the work of his Cabinet, the announcement said further.

Malacañang stressed that any move to re-organize the government will be based on considerations of economy, efficiency, and service. It recalled

that the joint executive-legislative commission studying reorganization of the government has cited these factors as the guiding principles in its work. It pointed out that any rumor or report of reorganization in the government was premature until his commission has completed its mission.

The President signed today Proclamation No. 102, extending the period for the national fund compaign of the Liberty Wells Association up to January 18, 1955, to provide additional time for the association to carry out its campaign successfully.

Under the previous proclamation, the fund campaign was scheduled to end today, December 18, 1954.

The President received Bob Hammond, president of The Voice of China & Asia, Inc., a radio network with offices at Pasadeña, California, with whom he made arrangements for the sending of American relief goods to needy farmers in government settlement areas. Hammond informed the President that his organization was sponsoring a campaign among the American people to solicit donations of clothing and foodstuffs for the needy millions in free countries of Asia. He said that tons of relief goods had already been distributed in Asia.

Accompanied to Malacañang by Eligio J. Tavanlar, NARRA general manager, Hammond said he was conducting a daily broadcast over 50 large radio stations in the United States. He expressed his desire to visit various NARRA settlement to find out the needs of the farmer's families.

The President instructed Tavanlar to accompany the radio executive to all the settlement areas and to give him all the necessary aid in connection with his investigations. He thanked the radio company for including the Philippines in its humanitarian project.

A delegation of municipal officials from Santiago, Isabela, headed by Mayor Andres Acosta requested and obtained the release of an 80-hectare land for homesite purposes. Accompanied by Rep. Samuel F. Reyes, the delegation also requested financial aid for the repair of school-buildings which had been damaged by recent typhoons.

The President received a huge, elaborate Christmas lantern equipped with an intricate, multi-colored lighting system donated by staff members of the *Bullseye*. The lantern was presented to him by *Bullseye* staffers Pedro Padilla, Horacio Q. Borromeo, and Pedro Gozun.

Other callers included Deputy Gov. Andres Castillo of the Central Bank and a few other officials who consulted him on problems of their respective offices.

The President left Malacañang about 10:30 a.m.

In the afternoon, the President appointed four provincial fiscals, one first assistant provincial fiscal, one second assistant provincial fiscal, and one second assistant city attorney.

The *ad interim* appointments made by the President were: Provincial fiscals—Benjamin Gorospe for Iloilo, Gabriel Valero for Laguna, Jose Lardizabal for Quezon, and Carlos Z. Abiera for Marinduque; first assistant provincial fiscal—Crisanto V. Varias for Misamis Oriental; second assistant provincial fiscal—Pedro Sara for Batangas; and second assistant city attorney—Jaime Agloro for Quezon City.

The President announced in the afternoon that he has decided to have the Philippine General Hospital converted into a charity institution exclusively devoted to taking care of non-paying patients in order to cope with the growing needs of the masses of Manila's population. Patients other than indigents who will be admitted to the hospital will be low-income employees who will be charged nominal fees, the announcement said.

Heretofore, the hospital, while largely public service hospital, has been taking care of pay patients, among them government personnel, at reduced rates. This long standing arrangement has served to set standards for private hospitals and prevented undue rise in the fees charged by them for patients. It is understood that appropriate substitute measures to keep service fees for pay patients in private hospitals within reasonable levels will be adopted.

The announcement indicated that instructions are to be issued shortly by the President to the UP board of regents, which has administrative control of the PGH, to take the necessary steps towards completely converting the institution for the use of indigent patients and those who cannot afford the cost of hospital care at normal rates. It was pointed out that as a tangible expression of President Magsaysay's sincere concern for the welfare of the masses, it is the aim of this newly announced administrative policy to place increasingly greater facilities at the service of the poor. It is also hoped that in due time all government hospitals will devote themselves entirely to attending to the less fortunate, where there are private institutions that can adequately respond to private needs.

December 19.—THE PRESIDENT and Mrs. Magsaysay with their children heard mass at 7:30 a.m. at the Malacañang chapel. After mass, the President had breakfast with his family and Rev. Fr. James McMahon, rector of the Ateneo de Manila.

Towards the end of breakfast, the President received 16-year-old student Roman Cruz, Jr., who came to bid goodbye prior to his departure for the United States Thursday (December 23) to attend the New York Herald-Tribune world youth forum as Philippine delegate. Young Cruz, who is the son of Judge and Mrs. Roman A. Cruz and the brother of Press Secretary J. V. Cruz, was chosen as Philippine delegate after an open competition with high school students throughout the country. Theme of this year's Herald-Tribune forum is "The World We Want." The President congratulated Cruz and wished him good luck.

At 9 a. m., the President held a conference with AFP brass on defense matters.

At the conference which lasted from 9 to 10:30 a.m., the President was informed by Armed Forces top brass that the present strength of the AFP was the minimum required to maintain internal security in the country and permit the peaceful pursuit of productive activities.

The AFP brass also unequivocally denied that the Department of National Defense had prepared an alleged "white paper" anticipating the fall of Formosa to the Communists and gearing Philippine defense preparations to this eventuality.

"Nationalist China is one of our staunchest allies in the anti-communist struggle in this part of the world," said Lieut. Gen. Jesus Vargas, AFP chief of staff, "and this report, which is completely without basis, may only succeed in hurting our harmonious relationships with that government."

Brig. Gen. Eulogio Balao, AFP vice-chief of staff, said that "we will have to admit our own position is untenable if we accept that the fall of Formosa is inevitable, because then we would be exposed on a vital flank. However, this is far from being our position." He pointed out that the armed might of the United States is committed to the defense of Formosa; hence, a pessimistic outlook on the future of that bastion is "unrealistic."

Besides Generals Vargas and Balao, those who conferred with the President were Defense Undersecretary Jose M. Crisol; Col. Jacinto Gavino, ROTC superintendent; and Col. Roman Gavino, secretary to the AFP general staff. Press Secretary J. V. Cruz was also present.

On the security requirements of the country, the President was told that the present AFP strength is the minimum requirement for maintaining peace and preserving the gains scored in the struggle with the armed Communist movement. Chief among these gains cited were the restoration of conditions permitting the peaceful pursuit of productive activities as well as the prestige earned by the Philippines as the country in Asia which has successfully contained an armed Communist uprising.

President Magsaysay agreed with the AFP brass that the success of the peace campaign has brought about conditions permitting the undisturbed pursuit of productive activities in agriculture and industry. He said one result of this campaign has been that barrios and fertile farmlands which had been previously abandoned because of insecure conditions were being re-

settled and restored to productivity. He said this movement back to the barrios is one of the main objectives of the Administration. It has helped relieve unemployment in the urban centers and has added to the country's production level, he added.

After the conference, the President and Mrs. Magsaysay went on a 30-minute motor drive along Dewey Boulevard, returning to the Palace before noon. After luncheon with his family, the President had a brief rest and in the evening he worked over pending state papers.

General Vargas and Defense Undersecretary Crisol reaffirmed that the basic objective of the military organization is still the maintenance of internal security. They said this objective has never been changed to one of emphasis on external defense and much less on aggressive pursuits. "It is absurd to think or say that our Armed Forces are being prepared for aggression," Crisol said.

The President said this would remain the strategic orientation of the Armed Forces under his administration. He said there will be no deviation from the primary objective of maintaining internal security. He added that while tremendous progress had been made in the anti-Huk struggle, the campaign was far from over and the dissidents were merely hoping and waiting for some sign of a slowdown in the Government's efforts.

Malacañang this day took a hand in the solution of the 15-day old bludgeon slaying of Jose Ramos, PRISCO audit clerk. In the interest of speedy justice, President Magsaysay in the evening directed Justice Secretary Pedro Tuason to order the National Bureau of Investigation to investigate the murder. He also directed Brig. Gen. Florencio Selga, PC chief, to have PC investigators join forces with the NBI sleuths in the hope of an early solution of the Ramos case.

December 20.—GOVERNORS and mayors crowded the President's schedule this day with delegations requesting funds for various public works projects in their respective bailiwicks, evidently in preparation for the local elections next year. The President started receiving callers about 8:30 a.m.

After receiving residents of Bago-Bantay who complained about the little help and attention they were receiving, the President ordered the immediate construction of roads and sewage system and the installations of electric facilities in Bago-Bantay. The President also directed Col. Antonio Chanco, chief of the AFP corps of engineers, to give two pre-fabricated schoolhouses to Bago-Bantay. He issued the orders through PCAC Deputy Commissioner Nicanor Maronilla-Seva, who accompanied the Bago-Bantay delegation.

The head of the delegation, J. Valdez, told the President that because of lack of sewage system, Bago-Bantay had become a dirty community. Valdez also said that electric lighting had not yet been extended to their place. The roads, he complained, were so bad that they were muddy during rainy season and dusty in the dry season.

After receiving a delegation from Bocaue headed by Mayor Evangelino Mendoza and accompanied by Rep. Erasmo Cruz, the Chief Executive released a total amount of ₱60,000 for the irrigation of four towns and the river control project in barrio Bambang, Bocaue, Bulacan. Of the total amount, ₱50,000 was earmarked for irrigation and the rest for the river control project.

Another ₱20,000 was released by the President for the river control project in Basud, Camarines Norte, upon representations made by Gov. Wilfredo Panotes, who gave the President a ₱1,110 donation to the Liberty Wells fund from his province.

Large provincial delegations from Laguna and Pangasinan called on the President. The Pangasinan delegation, composed of residents of San Nicolas, was accompanied by Rep. Justino Benito. They requested financial aid for barrio roads construction. Head of the delegation was Mayor Buenaventura Rillorta.

Rep. Wenceslao Lagumbay and Gov. Dominador Chipeco of Laguna accompanied a large delegation from the towns of Biñan and Luisiana, which also requested financial aid for barrio roads construction. With the Laguna group were Luisiana Acting Mayor Mrs. Nemesia Villatuya, Biñan Mayor Jesus Garcia, retired Brig. Gen. Mateo Capinpin, NBI Assistant to the Director Mariano Almeda, Luisiana Councilor Veronica Rondilla, and residents of the two municipalities.

Gov. Vicente Quisumbing of Masbate was given by the President three hectares of land for the site of the provincial capitol. The piece of land was a part of 17 hectares reserved for the Department of Education.

Other callers included Rep. Lamberto Macias of Negros Oriental, Govs. Wenceslao Pascual of Rizal, Rafael Lazatin of Pampanga, and Damaso Samonte of Ilocos Norte, and Mayor Jose Rodriguez of Cebu City, who was promised financial aid by the President for his city's waterworks.

About 11 a.m., the President received Walter G. M. Buckisch, local manager of Ginn and Company, educational publishers; and Ramon C. Ordoveza of the Carmelo and Bauermann, who presented him with a copy of a book, *Your Country and Mine,* the first product of the joint partnership of the two companies in the production of textbooks for Philippine schools. Adopted by the board of textbooks for basic use in the fourth grade social studies course, the book represents the first implementation of plans of the two publishing companies to help the government in its policy of promoting local industries to save dollar exchange.

Buckisch informed the President that a second book is now in the press and that they expect to follow these initial publications with others as fast as necessary arrangements for securing materials for printing and binding could be made.

In the afternoon, the President received Budget Commissioner Dominador Aytona who reported that as of November 30, 1954, the Government had balanced its income and expenditures with a surplus income in the amount of ₱197,726.77.

From these figures, Aytona stressed, the Government's income was more than the expenditures by ₱197,726.77. He informed the President that for the same period last year, the Government's total income was ₱224,857,327.87 while the total expenditures for the same period was ₱235,482,954.67, incurring a deficit of about ₱10.6 million. It is noteworthy, Commissioner Aytona pointed out, that whereas by November of last year the former administration had already incurred a deficit of ₱10.6 million, the present administration, by November this year, had a surplus of some ₱197,000.

One other important point stressed by the Budget Commissioner to the President was that the actual income during the five-month period from July 1 to November 30, 1954, was ₱239.2 million as compared to ₱224.8 million collected during the same period last year by the past administration. These figures, Aytona said, showed that the present administration collected ₱14.4 million more than the collection for the same period last fiscal year.

The President was informed that the increased collections this year over those of last fiscal year enabled the Government to increase its expenditures amounting to ₱239 million as compared to ₱235.5 million during the same five-month period last fiscal year. Commissioner Aytona told the Chief Executive that from these figures it is evident that the Government is returning to the people in the form of more services and public improvements all the taxes that it was receiving from the people.

December 21.— AFTER having breakfast with John Taylor, Philippine Long Distance Telephone Company executive, and Budget Commissioner Dominador Aytona, the President received callers.

Three members of the House national defense committee, including Rep. Bartolome Cabangbang, told President Magsaysay today they have not urged any cuts in the Armed Forces budget and added that adoption

of the Cabangbang plan for reorganization of the AFP would entail the same if not a larger budget for the first year at least.

Reps. Esteban Bernido, committee vice-chairman, Lorenzo Teves, and Cabangbang himself said during a visit to the President the impression had been created that the Cabangbang plan was motivated by a desire to cut the Armed Forces budget drastically. This impression was incorrect, they said.

Cabangbang said that whether or not his plan was adopted, he personally believed there was no need or justification for trimming the AFP budget except for the elimination of a few unnecessary services.

Explaining his reorganization plan, Cabangbang told the President his program of putting up a citizen army would not adversely affect the peace-and-order situation but in fact would promote it. He made it clear, however, that his plan would not entail any drastic cuts in Army spending. He said the first year of his plan would require the same if not a larger budget than the present although gradual economies would be achieved in the succeeding years. Cabangbang reiterated to the President that he had been misquoted and misunderstood, in the sense that his plan was immediately interpreted as a move to slash the AFP budget drastically. He emphasized his proposal did not call for such a slash.

The defense committee legislators also informed the President they were in favor of increasing the amount in the AFP budget for equipment. They pointed out the maintenance and operation of MDAP due from the United States would require this larger outlay.

Gov. Vicente Constantino of Quezon province told President Magsaysay today that any reduction of the Armed Forces in his province would prejudice peace and order with the attendant danger of a set-back to economic progress in Quezon. Constantino said the three BCTs maintaining security in his province were the minimum required to keep peace in Quezon and discourage dissidents from renewing depredations. He said the people of Quezon would lose their sense of security if these forces were diminished. He said the soldiers in Quezon, aside from maintaining peace and order, were helping to settle farmers in government settlements and in gathering coconuts from remote and dissident-infested barrios.

The President also received Rep. Angel Castaño of Manila, who said he would propose an appropriation of ₱3,500,000 for the construction of an airstrip for jet planes which will come from the United States.

According to Rep. Castaño, one squadron of jet planes has been pending delivery since January but could not be turned over because of the lack of airstrip for jets. He said that in his conference with Pentagon officials while he was in the United States, he heard of the willingness of United States officials to give jet planes to the Philippines. Castaño said that the Philippines is the only country in the Asian line of defense of the democracies that has no jet planes.

Rep. Castaño accompanied a group of squaters from Pritil, Tondo, who were facing ejection. The President promised the squatters that he would help them.

The President received a check for ₱40,000 for the Liberty Wells fund from the Philippine National Bank. The check was given to the President by officials of the PNB. Among those who came for the presentation of the check were PNB President Arsenio Jison, Board Chairman Jose Paez, and Board Members Fred Ruiz Castro, Francisco Ortigas, Jose Y. Orosa, Castor Cruz, Francisco Aguinaldo, Conrado Vicente, and Pedro Roxas.

The Philippine Lawyers Association also called to invite the President to speak before them and the delegates to the Constitutional Convention on Constitution Day in February. Members of the PLA who called on the President were Atty. Arturo Alafriz, president; Rep. Arturo Tolentino, executive vice-president; Rep. Constancio Castañeda, and Dean E. Voltaire Garcia. The Chief Executive accepted their invitation.

Among the President's other callers were Sen. Quintin Paredes and Macario Peralta, Jr., and Rep. Lucas P. Paredes, Leonardo B. Perez, Pedro Lopez, and Wenceslao Lagumbay.

The President kept receiving provincial delegations up to 12:30 p.m.

A group of farmers from Bag-gao, Cagayan, requested the President to construct a 12-kilometer road to connect their remote town to larger towns. Accompanied by Rev. Felix Domingo, parish priest, the farmers explained that the only means of exit from their municipality was by banca which take them 12 hours to reach the nearest market for their produce.

A group of officials from Cavite City headed by Mayor Fidel Dones asked for the construction of a breakwater to save the city from being eaten up by the sea. Accompanied by Rep. Jose T. Cajulis, the Group said that the area was chipping off their coastline at the rate of one hectare a year.

Some 60 provincial fertilizer supervisors of the Department of Agriculture and Natural Resources, now on a three-day convention in Manila, called to pay their respects. Floro B. Flores, president of the association, presented the President with a wooden tray containing wooden statutes of farmers at work in a rice field.

A delegation of municipal officials from Morong and Dinalupihan, Bataan, headed by Mayors Lorenzo Rosales and Federico Muli, solicited financial assistance for puericulture centers and artesian wells in their localities. The group was accompanied by Gov. Adelmo Camacho.

A delegation from Solano, Isabela, asked the installation of an irrigation system. This delegation included Rep. Leonardo Perez.

Representatives of Caloocan's "200", a civic organization in Caloocan, Rizal, submitted plans for the beautification of the Bonifacio monument in Balintawak. The plans included the installation of four ornamental lamps, 24 benches, granite flooring, and landscaping. It will entail a total expense of ₱25,000.

Representatives of families living at the NASSCO and NAFCO compounds in Punta, Sta. Ana, paying land rentals to the government requested the subdivision of the government property and its sale to occupants numbering about 200 families.

Other callers included Gov. Eliseo Quirino, who submitted plans for the projected fair and exposition in Ilocos Sur next month; Mayor Teodoro P. Santiago of Cabanatuan City, who requested the temporary assignment of a tenancy commissioner to his city to enforce tenancy laws during harvest season; and Vice-Mayor Alfonso Trias of Naga, Cebu, who sought aid for rural improvement.

The President kept receiving provincial delegations up to 12:30 p.m.

Malacañang said in the evening that there was no such thing as a grant of ₱700,000 pork barrel to Rep. Wenceslao R. Lagumbay of the second district of Laguna, contrary to published reports. The Palace emphasized that not a single centavo of pork barrel money has been released to Lagumbay.

Budget Commissioner Aytona reported to the President in the evening that the records of the Budget Commission showed that what had been actually released to the second district of Laguna was ₱211,993 as its share from the improvement portion of the Highways Special Fund under Republic Act No. 917, and not from the Pork Barrel Fund. Aytona said that under Republic Act No. 917, the Highways Special Fund is allocated to different provinces and chartered cities in accordance with the formula prescribed in the Act itself. The amount released to the second district of Laguna, as already stated, represented the share of the district in accordance with that formula. He added that many provinces and chartered cities have likewise received at least 50 per cent of their share for the maintenance and repair of roads and bridges and their share from the improvement portion as fast as district engineers can program their corresponding projects.

Commissioner Aytona explained that the release of the so-called pork barrel funds have not been made in full owing to lack of funds for the

purpose. The most that could be earmarked for pork barrel, he said, was roughly 20 per cent of the amount allotted. Aytona told President Magsaysay that his office has been constrained to take this action an effort to keep the total expenditures of the government within the estimated income. He recalled that, as officially reported Monday night, the excess of income over expenditures during the five-months period, from July 1 to November 30, 1954, was ₱197,726.77 only. It is clear, he added, that if the so-called pork barrel funds were released in full, a deficit would be incurred.

Aytona also told the President that actual releases of funds for public works projects had been made on the basis of urgent needs, generally determined by members of Congress and local officials who are more conversant with conditions in their localities. The urgency of these needs usually resulted from destructions caused by typhoons, floods, and other calamities. In this connection, Aytona said that the Cabinet had laid down priorities in the releases of funds for public works purposes; namely, irrigation, waterworks, artesian wells, barrrio roads, school buildings, river control, and shore protection works.

The Budget Commissioner expressed the hope that as additional funds become available more would be released for public works projects.

December 22.—BOTHERED by a bad cold owing to the low temperature the past few days, the President missed two important engagements this day. He missed the scheduled wedding of Mayor Jose V. Yap of Victoria, Tarlac, at 5:30 a.m. and the Cabinet meeting at noon. The First Lady represented the President at the Lourdes church and met the new presidential *compadres* and *ahijados*.

The President did not attend the Cabinet meeting today, because of his cold which required treatment at the Philippine General Hospital.

The President arrived unexpectedly at the PGH with Education Secretary Gregorio Hernandez, Jr., and proceeded to the wards. He talked to the patients and asked them about their conditions, cheering and wishing them a happy Christmas. He also talked to the staff and employees.

Director Quintos joined the Chief Executive and showed him around the PGH building. The President was very much impressed by the cleanliness of the wards and beds. He expressed satisfaction over the improvements accomplished by the new director. He promised Quintos that he would work for a larger appropriation for the PGH in line with the plan to make the hospital a charity institution. The President stayed at the hospital for about 20 minutes. He returned to Malacañang before noon.

Before going to the PGH, President Magsaysay inducted into office five members of the newly-created Community Development Planning Council. The President said that he created the council to coordinate and integrate government and private efforts in rural projects in order to achieve maximum benefits, effect economy, and avoid duplication and overlapping of activities and loss of time.

The President told the council members that greater efforts should be exerted in the rural areas because "the strength of our country depends to a large extent upon the virility, industry, and patriotism of our rural people." He called upon all citizens of the country, as well as voluntary organizations at present engaged in rural projects, to assist the council to enable it to discharge its duties effectively.

Those whom the President inducted into office were Secretary of Education Hernandez, Secretary of Health Paulino Garcia, Secretary of Agriculture and Natural Resources Salvador Araneta, Maximo Kalaw, and Ramon Binamira, executive secretary of the council.

Members of the board who were absent were Executive Secretary Fred Ruiz Castro, Public Works Secretary Vicente Orosa, Defense Secretary Sotero Cabahug, Social Welfare Administrator Pacita Madrigal Warns, Conrado Benitez, National Economic Council Chairman Filemon Rodriguez, and Mrs. Benito Legarda, Jr.

Also inducted into office by the President were the members of the Jose Rizal National Centennial Committee composed of Secretary of Education Hernandez, University of the Philippines President Vidal Tan, Director of Public Libraries Luis Montilla, and Director of Public Schools Venancio Trinidad.

The President's first caller this day was Brig. Gen. William L. Lee, commanding general of the 13th Airforce, who gave the President Christmas gift packages for the poor.

Manuel Sumulong, director of the Bureau of Animal Industry, accompanied Dr. P. V. Cardon, director-general of the Food and Agriculture Organization of the United Nations, who paid a courtesy call on the President. With Dr. Cardon were William H. Cummings, Far Eastern director of FAO, and Charles L. Coltman, FAO Far East information officer.

The Chief Executive also received John Gray of the Austin cars of England and H. Levine of the Bachrach Motors. The automobile executive were accompanied by Manuel Barredo.

Dr. Generoso F. Rivera of PHILCUSA and Dr. Robert T. McMillan of the FOA gave the President a copy each of their reports on Rural Philippines and their survey of the economic and social conditions of rural households in Central Luzon.

Other callers of the President were Sen. Mariano Jesus Cuenco and Director Eugenio Cruz of Plant Industry, who invited the President to the convention of field men of the Bureau of Plant Industry on January 15, 1955.

The Cabinet at its regular meeting today, presided over by Vice-President Carlos P. Garcia, appointed a committee to study the papers on the Cebu arrastre bids.

The Committee is composed of Finance Secretary Jaime Hernandez, as chairman, with Defense Secretary Sotero Cabahug, Economic Coordination Administrator Alfredo Montelibano, Commerce Secretary Oscar Ledesma, and Labor Secretary Eleuterio Adevoso, as members. The committee was commissioned to study the bids of some 25 persons who had participated in the bidding for the Cebu arrastre service. It was requested to submit its report to the Cabinet in its first meeting for the new year on January 5, 1955.

During the Cabinet meeting, OEC Administrator Montelibano presented a resolution unanimously approved, greeting the President and his family and wishing them a Merry Christmas and a Happy New Year. At the same time, the Cabinet members pledged anew their personal and official loyalty to the President, assuring him of their "sincere and whole-hearted cooperation, with fervent prayers for the continued success of his administration.

The Cabinet also approved Philippine participation at the first session of the ECAFE sub-committee on trade conference scheduled in Hongkong on January 6 to 12, 1955. This conference was deemed important as it would:

(*a*) Review the trade and commercial policies of the countries of the region;

(*b*) Review the progress made by them in the development of techniques and methods for trade promotion; and,

(*c*) Study other problems affecting international trade.

On recommendation of Commerce Secretary Oscar Ledesma, the Cabinet approved that one representative each from the Department of Commerce and Industry, Department of Foreign Affairs, Department of Agriculture and Natural Resources, and one representative and five advisers from the Chambers of Commerce of the Philippines and one representative and five advisers from the Philippine Chamber of Industries be sent to the conference. The Government will bear the expenses of the three representatives from the departments concerned while the representatives will pay their own expenses.

The Cabinet also approved the sale or lease of the paper mill and bag-making plant of the Cebu Portland Cement Company in Naga and Cebu through public bidding. The Office of Economic Coordination was requested to lay down the terms and conditions to be required in the bidding.

Administrator Montelibano informed the Cabinet that the payment of pensions of retired employees of the Manila Railroad company amounting to ₱531,122 was due to be completed Wednesday (Dec. 22). Montelibano said that the payments were rushed to help the employees enjoy their Christmas season.

The President did not attend the Cabinet meeting because of a cold which required medication at the Philippine General Hospital.

In the afternoon, the President received a report from the ACCFA that the National Onion Growers Cooperative Marketing Association had harvested their onions which they had sent to Manila in truckloads and sold in the public markets at ₱.90 a kilo, retail. ACCFA Administrator Osmundo Mondoñedo informed the President of the action taken to relieve the shortage and high price of onions. Samples of the onions being sold in the market were brought to the President.

The President was pleased that the NAGROCOMA was able to supply the market with this much needed commodity. He was informed that beginning December 27, new shipments of onions by the PRISCO were expected to arrive.

The President received from Ignacio M. Salaya, general manager of the Negros Navigation Company, through Juanito L. Ledesma, president of the company, a check for ₱2,000 as contribution to the President's Liberty Wells fund campaign. The President thanked Mr. Ledesma for the contribution.

The President also received OEC Administrator Alfredo Montelibano and NASSCO Manager Bernardo Abrera, who took up with the Chief Executive matters pertaining to the NASSCO.

On the President's way to the Malacañang Park to attend the employees' Christmas party, he was greeted at the Malacañang reception hall by the Acapella choir of the Philippine Union College of Caloocan, Rizal, which sang for the President five Christmas carols including a lullaby. The President was joined a few minutes later by Mrs. Magsaysay.

The group was accompanied by Dr. Ruben Manalaysay, president of the college, and by Professor Colin Fisher, head of the music department of the college, and his wife, Mrs. Ruth Mitchell Fisher, who conducted the choir.

President and Mrs. Magsaysay joined the Malacañang employees at their annual Christmas party held at the Malacañang Park recreation hall in the afternoon.

The President in a brief Christmas greeting to the employees thanked them for their dedicated service to the Government and for their loyalty to the Administration. He said that he appreciated very much their fruitful service to the government and that through this dedicated service they have contributed to the success of the Administration.

He concluded his brief extemporaneous speech, saying that he and Mrs. Magsaysay wished to extend their personal greetings to all Malacañang employees and their families, wishing them a merry Christmas and a happy New Year.

The President was warmly applauded by the employees who shouted "*Mabuhay*" and "Long Live President Magsaysay".

Before the President spoke, Executive Secretary Fred Ruiz Castro, who acted as spokesman of the Malacañang employees, extended to the Chief Executive and his Lady the season's greetings. He reiterated the loyalty of the employees and their unflinching support to the Administration and expressed the hope that they would render more fruitful service during the new year.

The President and Mrs. Magsaysay arrived at the Malacañang recreation hall at about 4:50 p.m. and stayed up to 5:10, as they had to attend another engagement.

December 23.—THIS day being children's day in Malacañang, the President confined himself in the Palace while the First Lady distributed Christmas packages to some 14,000 indigent children at the Malacañang grounds.

The President started the day with a breakfast conference with Budget Commissioner Dominador Aytona; Lieut. Gen. Jesus Vargas, AFP chief of staff; and Brig. Gen. Eulogio Balao, vice-chief of staff. No announcement was made after the conference.

After the breakfast conference, the President received callers up to about 12 noon. Then he held a series of conferences with various Malacañang assistants on pending state matters.

The President received this morning Alexander D. Calhoun, visiting vice-president of the National City Bank of New York, who called at Malacañang to pay his respects following his recent arrival in Manila in the course of a tour of the Far East. Calhoun, who had stayed in Manila for many years as head of the local NCBNY branch, informed the President that American investors were showing real interest in the Philippines. He added, however, that the nationalization movement here might tend to discourage foreign capitalists who have plans of pouring in some investments in this country.

Eugene Barnett, former general secretary of the World Alliance of Young Men's Christian Associations, paid a courtesy call. Visiting the Philippines for the third time in 20 years. Barnett said he was very much impressed by the new enthusiasm which seemed to have gripped Filipino youths of today to help improve life in the rural areas. Barnett, during his brief talk with the President, recalled that in his visit here in 1933, he found the young people here obsessed with the idea of independence. When he came again in 1947, he noted that the youth of the land were still recovering from three years of occupation and eager to continue their interrupted education. He said that one of the things that impressed him most on his third visit was the new interest of the young in the Government's program of rural improvement aimed at checking the spread of dissidence in this country.

Barnett was accompanied to Malacañang by Dean Conrado Benitez, president of the local YMCA; Alfonso SyCip, vice-president; Ramon Roces and Dr. Gumersindo Garcia, board directors; Domingo C. Bascarra, general secretary; and Luis Schwan, fraternity secretary from the United States.

Mrs. Elsie Samuel Gaches, who has just returned from the United States also called and reported on her observations abroad. She said that Filipinos in San Francisco were busy raising funds for the administration's Liberty Wells fund drive.

Dr. Mita Pardo de Tavera, who was also received by the President, represented the Philippines at the Tuberculosis Society conferences in Spain and the United States. She said that Filipino doctors are not far behind in technical knowledge of tuberculosis.

Delegates to the Joint Asian 9th Student Conference of the CONDA also called to pay their respects before proceeding to their conference site in Baguio City. The group included Zatwant Gill of the University of Malaya, who headed the Malayan delegation, Michiaki Yasuda of Tokyo University, who headed the Japanese delegation, Yao Shun, editor of the *Free Youth Monthly,* who headed the Free China Delegation; and Oliver Amorin, CONDA president. President Magsaysay wished the students success in their conference which will be held in the Pines City from December 26 to 31.

Other callers included Defense Undersecretary Jose M. Crisol, Reps. Domingo Veloso of Leyte and Vicente L. Peralta of Sorsogon, and Govs. Dominador Chipeco of Laguna and Juan F. Triviño of Camarines Sur.

Mrs. Luz Banzon-Magsaysay this afternoon played Santa Claus by distributing Christmas packages to some 14,000 indigent and underprivileged children during the 1954 Malacañang Christmas Festival celebrated at the Malacañang grounds. The spacious lawn east of the Executive Office building was filled to overflowing with children of all ages led by hand by their doting parents or carried on hips if too small to walk. Malacañang

oldtimers said that this was the biggest assemblage of children they had ever seen in Malacañang.

The festival started at exactly 2 p.m. with a program held on a stage whose main motiff was a "manger scene" built on the east side of the Executive Office building. Across the top of the stage was the message: *Maligayang Pasko at Manigong Bagong Taon.* The program began with community singing of Christmas carols by the audience led by the Boys Town choir and assisted by the Centro Escolar University girls rondalla. This was followed by a Christmas story in dance, performed by the Classic Ballet Academy, chorography by Miss Totoy Oteyza and assisted by the Philippine Constabulary Band.

The program was highlighted by the Chirstmas candle ceremony led by the First Lady, who lighted the first of seven candles signifying the seven Christmas festivals celebrated in Malacañang, of which the present was the seventh. She was assisted by Mesdames Pacita M. Warns, Carlos P. Garcia, Jesus Vargas, Jose B. Laurel, Jr., Emmanuel Pelaez, and Pilar Hidalgo-Lim.

The last number was the unveiling of the *belen* to the singing of "Joy to the World" by the audience, assisted by the PC band.

The program over, Mrs. Magsaysay walked from the stage to the mid-portion of the lawn where 14,000 gift packages had been stacked near tables, arranged in a circle and marked from A to Z. She then started the distribution of the gift-packages assisted by some 300 prominent ladies.

The gift distribution started at about 3 p.m. and lasted up to about 5 p.m. The gift distribution was handled in a very orderly and efficient manner with the help of the presidential guards.

After the gift distribution, Mrs. Magsaysay received at the Malacañang Social Hall a special delegation of children of ex-Huks who came from the EDCOR settlement in Buldon, Cotabato. The children were accompanied by their parents and were led by Major Yadao of the EDCOR. The first Lady was especially pleased when the children who numbered around 20 sang carols, performed Moro dances, and presented the First Lady with a white orchid from Cotabato.

It was announced that the children who had tickets for the festival but could not get their gift packages may call for their gift packages Friday at the office of the Malacañang social secretary.

December 24.—PRESIDENT Magsaysay and Nacionalista Party congressional leaders agreed at a Malacañang breakfast conference this day to explore during the next congressional session in January ways and means of improving the government's tax collection machinery and strengthening its financial position. Agreement was also reached for the speedier release of funds for community projects, with priorities in the execution of such projects to be determined in consultation with the senators and representatives.

In line with this agreement, the President ordered the immediate release of ₱600,000 to undertake a survey of public works and community projects earnmarked for implementation. This amount was released to the Department of Public Works and Communications.

The conference discussed possible expansion of the government's tax collection force. It was agreed upon to look into the prospect of sending Bureau of Internal Revenue pensionados abroad to study tax collection systems in other countries. The FOA will be asked to finance these studies. The conference also discussed a number of tax proposals designed to strengthen the government's financial position. However, no agreement was reached on any of these proposals, which will be studied further.

Regarding the release of funds for community projects, the President assured the congressional leaders of speedier release of such funds. It was further agreed upon that the particular senator and representative concerned will be consulted on the determination of priorities in the implementation of such projects.

Present at the conference, besides the President, were Senate President Eulogio Rodriguez, Sr.; Senator Claro M. Recto; Speaker Jose B. Laurel, Jr.; Speaker Pro-Tempore Daniel Romualdez; Majority Floor Leader Arturo Tolentino; Reps. Tobias Fornier, appropriations committee chairman; Florencio Moreno, public works chairman; Gaudencio Abordo, ranking member of the ways and means committee; Secretaries Vicente Orosa of public works and Jaime Hernandez of finance; and Budget Commissioner Dominador Aytona.

After the conference, the President inducted into office Carlos Abiera as provincial fiscal of Marinduque. Present at the induction were Senate President Eulogio Rodriguez, Sr., Speaker Jose Laurel, Jr., and Reps. Arturo M. Tolentino, Florencio Moreno, and Gaudencio Abordo.

Then, the President received the chiefs of the various divisions in the Executive Office of the President who extended to him their Christmas greetings. The Chief Executive thanked the well-wishers and said he was very much satisfied with their loyalty and devotion to their service.

The division chiefs also called on the First Lady. They had pictures taken with the President and the First Lady. The Chief Executive and the First Lady then left Malacañang for an outside engagement.

In the afternoon, the President received Malacañang newspapermen and gave them their Christmas gifts. He reminisced with the newspapermen on his first year in the Palace.

The President also received Justice Secretary Pedro Tuason, Hilario F. Hilario of the Philippine Veterans Board, and Gov. Alejo Santos of Bulacan.

On the eve of Christmas, the Chief Executive granted the traditional Christmas pardons to some 30 prisoners, upon the recommendation of the Board of Pardons and Parole. He granted conditional pardons to 25 prisoners, three absolute pardons, one special absolute pardon, and one commutation of sentence.

Then the President dictated his Christmas message to his people. (See *Historical Papers and Documents,* p. 5759, for the full text of the message.)

In the evening, the President honored visiting Prime Minister John Kotelawala of Ceylon at a state dinner at the Palace. (See p. 5759, for the President's brief remarks at the state dinner.)

The President could not hear the midnight mass at the Malacañang chapel owing to the state dinner, but he joined his family at the traditional *media noche.*

December 25.—THIS day being Christmas Day, the President did not receive callers. However, he received his relatives who, together with the President, observed their first Christmas in the Palace.

The President had breakfast with the members of his family and his reltaives, including his parents, Mr. and Mrs. Exequiel Magsaysay.

Then, after reading the morning papers, the President went over the budgetary estimates submitted by his department secretaries.

The President sent back today to his various department secretaries their budgetary estimates for the fiscal year 1955-1956 with instructions that they cut down further their budgetary requests.

The President, who spent Christmas day looking over the budgetary estimates of the various executive departments, noted projected items of expenditures that were dispensable and sent instructions that the proposed new budget be trimmed down to the most essential personnel and services. He returned the budgetary estimates to the respective departments through Budget Commissioner Dominador Aytona.

The total initial budgetary requests sent in to the President amounted to nearly ₱800,000,000. The President expressed the view that these etsimates could be reduced without endangering the standards of efficiency and service set by his administration.

December 26.—KNOWN for his sturdiness and strong health, the President succumbed for the second time in a week to colds brought about by the chilly December weather. He spent a very quiet Sunday, keeping himself to his bedroom. He read Sunday papers in the morning and went over state papers in the afternoon.

In the afternoon, the President slipped out of the Palace for "an airing" along Dewey Boulevard. Upon returning to the Palace, the President was told that Mayor Arsenio H. Lacson was celebrating his birthday. Immediately, he ordered a citygram sent to the city mayor's residence congratulating Mayor Lacson on his birthday.

The President's message read: "Luz joins me in wishing you very happy birthday and continued good health, happiness, and success."

Earlier in the afternoon, the President ordered Col. Napoleon D. Valeriano to send immediately an ambulance to retrieve the body of Staff Sergeant Valeriano Galpo, who had died at 2 p.m. this day as a result of a motor car accident in barrio Pulay, Villasis, Pangasinan.

Lt. Salvador Manubag of Baker Company was dispatched by Col. Valeriano to retrieve Galpo's body from Villasis, where it had been kept at the municipal building after the fatal accident.

According to official reports received by Col. Valeriano, Galpo jumped off the weapons carrier he was riding in as it skidded while running 30 miles per hour in barrio Pulay. Sgt. Galpo and other members of the presidential guard battalion were escorting the President's children to Baguio City, when the accident happened.

The President in the evening extended his condolences to the family of Galpo. He also directed Col. Valeriano to see to it that payment of all the benefits accruing to Galpo's family be made immediately.

Deeember 27.—AS commander-in-chief of the Armed Forces of the Philippines, President Magsaysay received early this morning Admiral Arthur W. Radford, chairman of the U. S. joint chiefs of staff, and reviewed in a 45-minute conference the military situation in the Far East.

Arriving in Malacañang at exactly 8:30 a.m., the visiting head of the American military organization inspected an honor guard formed by a unit of the presidential guard battalion at the Palace grounds. Then he was shown to the President's study where the Chief Executive received him.

After a brief exchange of greetings, the President and Admiral Arthur W. Radford proceeded to the Malacañang porch and promptly began their conference which lasted up to 9:15 a.m. Also present at the conference were Rear Admiral Hugh Hilton Goodwin, commander of the U. S. naval forces in the Philippines, and Counselor Charles Barrows of the U. S. Embassy, who accompanied Admiral Radford to Malacañang.

Following the conference, the President repaired to his private study where he worked on a bunch of pending state papers. The President wanted to clear his desk of all pending papers before the New Year.

Shortly before noon, the President issued Proclamation No. 103, declaring Friday, December 31 this year, as a special public holiday "to enable the people to enjoy an uninterrupted Christmas holiday." In his proclamation, the President said that Thursday, December 30, and Saturday, January 1, being holidays, December 31 might be declared a special public holiday without prejudice to the public interests.

Accompanied by his aide, Maj. Patrocinio Garcia, the President left Malacañang about 11 a.m.

President Magsaysay rallied the youth of free Asia against the passing challenge of communist imperialism in an address read by Ambassador Felino Neri before the joint Asia-National Student conference in Baguio City at 2 p.m. this day.

In his address, the President urged Asia's youth to:

1. Resist aggression, as the youth of Korea, Thailand, and the Philippines did in Korea together with the youth of 14 other free nations:

2. Help fight internal subversion, as the youth of this country have done and are continuing to do;

3. Do their share in raising standards of living in underdeveloped regions which are the spots most vulnerable to communist penetration;

4. Help strengthen the institution of democracy and devotion to democratic methods of solving economic, social, and political problems; and

5. Promote understanding and cooperation among free nations.

The President expressed confidence that the young people of Asia "will meet this challenge squarely, and do their part in moulding the unity and safeguarding the freedom of the democratic nations." (See the full text of the address in the January issue of the *Gazette*.)

In the evening, President and Mrs. Magsaysay honored Admiral and Mrs. Arthur W. Radford with a formal dinner at the Malacañang banquet hall.

The dinner was attended by Vice-President and Mrs. Carlos P. Garcia, the leaders of Congress and their ladies, ranking members of the Department of Foreign Affairs, Cabinet members, and the top brass of the U. S. Armed Forces in the Philippines and the AFP.

December 28.— AFTER breakfast, the President received a few callers among whom were Sen. Tomas Cabili, National Power Corporation General Manager Filemon C. Rodriguez, and RFC Chairman Eduardo Z. Romualdez. Feeling indisposed, the Chief Executive stayed in his room the whole morning.

The President accepted today "with reluctance" the application of Filemon C. Rodriguez to retire from his various government posts effective at the end of the year.

Rodriguez during his call this morning applied for retirement from his positions of chairman of the National Economic Council, coordinator for U. S. aid (PHILCUSA), and general manager of the National Power Corporation.

Rodriguez had just returned from the United States, where he underwent medical check-up at John Hopkins Hospital. He had been advised by physicians there to take a rest. He said the check-up revealed there was nothing wrong with his health except that he needed some rest.

In accepting Rodriguez' application for retirement, President Magsaysay expressed the hope that the rest might restore Rodriguez to health and make him available again for public service sometime in the future.

The President today authorized the immediate release of ₱240,000 for typhoon and fire victims all over the country. The money will be released to the Social Welfare Administration, which will take care of the distribution of aids. The authority to release the amount, which will be taken from the President's contingent fund, was transmitted to Budget Commissioner Dominador Aytona.

It was believed that a large share of the ₱240,000 will be given to the hurricane victims in Misamis Oriental.

In the afternoon, the President went to the V. Luna General Hospital for treatment of his nasal ailment.

December 29.— EARLY in the morning, the President had a breakfast conference with Lieut. Gen. Jesus Vargas and Brig. Gen. Eulogio Balao, AFP chief of staff and vice-chief of staff, respectively, and Ambassador Felino Neri. Press Secretary J. V. Cruz was also present at the breakfast conference.

They went over the subject of their discussion with Admiral Arthur W. Radford, chairman of the U. S. Joint Chiefs of Staff, to check up on reports that the Admiral had promised United States help to equip and arm one Philippine Armed Forces division.

Clarifying reports in some morning papers about Admiral Radford's recent visit, Malacañang said after the breakfast conference that no definite commitment had been made by the visiting American official regarding a

Philippine proposal for the U. S. Government to arm and equip one trainee division in the Philippine Armed Forces.

Malacañang recalled that this proposal had been broached to the U. S. Government originally by Gen. Vargas when he last went to the U. S. half a year ago. Gen. Vargas asked the U. S. to arm and equip one division of 20-year-old trainees (not of regulars) to add to the country's pool of trained manpower for its citizens Army. The proposal was reiterated at the Philippine-U. S. foreign ministers council meeting which was convened on the occassion of Secretary Dulles' visit to Manila.

When Admiral Radford stopped over in Manila a few days ago, Gen. Vargas took advantage of his visit to reiterate anew this old proposal. Admiral Radford (as he himself subsequently stressed) did not make any commitments. He merely said he would take up the matter with his government.

Malacañang said the implementation of this proposal thus depended on two conditions. The first is that the U. S. Government would agree to arm and equip the proposed trainee division. The second is that the Philippine Government, through the Congress, is able to raise a counterpart fund to support said trainee division.

In this conection, it was recalled that the Council of Leaders had approved in principle Gen. Vargas' proposal at a meeting sometime ago, provided the projected division was composed of citizen trainees. Since this was the same thing contemplated by the Armed Forces, the Council extended its approval in principle to the plan.

President Magsaysay after the breakfast conference motored to the Legislative Building on P. Burgos Avenue and viewed the remains of Sen. Esteban R. Abada, which lay in state at the Senate session hall. Accompanied by his air aide, Lt. Col. Emilio Borromeo, the President left Malacañang about 10:15 a.m. Arriving at the Senate session hall some five minutes later, he went direct to the raised platfrom to view the body of the deceased senator.

Staying in the hall some 10 minutes, the President extended his condolences to relatives of the deceased, including Rep. Conrado Morente of Mindoro Oriental, brother-in-law; and Geronimo and Julian Abada, brothers of the late senator. Immediate members of the bereaved family were not there at the time of the President's visit, as they had gone home to rest after having stayed up in an all-night vigil over the remains.

After extending his condolences and exchanging greetings with a number of senators and representatives in the hall, including Sens. Fernando Lopez and Justiniano S. Montano and Rep. Cornelio T. Villareal of Capiz, the President returned to Malacañang at 10:25 a.m.

Malacañang approved today the half-masting of the national flag on the Luneta at 7:03 a.m. tomorrow, Rizal Day, as a feature of this year's Rizal Day celebration and all future celebrations.

Executive Secretary Fred Ruiz Castro in a letter to the chief of staff of the Armed Forces of the Philippines, requested that the Army take all the necessary steps to implement the approval of this feature.

Castro also authorized that a company of the Armed Forces, together with the Philippine Constabulary band or any other Army band, participate in the flag ceremony.

According to the arrangements, the Filipino flag will fly at full mast on the Independence flagpole marker in front of the Rizal monument on the Luneta at sunrise tomorrow. The half-masting ceremony will be executed as the signal is sounded by the Insular Ice Plant blast at 7:03 a.m., the time when Rizal was shot on Bagumbayan field 58 years ago. The flag will stay in that position during the sounding of the regulation taps and the firing of three musket volleys. Then it is returned to full mast and saluted with the playing of the National Anthem.

This new feature of the Rizal Day celebration to be introduced in this year's observance was suggested to the Executive Secretary by Col. Antonio C. Torres.

The President this day granted conditional pardon to three prisoners on the recommendation of the Board of Pardons and Parole.

The Presidential Asian Good Neighbor Relations Commission announced this day the establishment of the Magsaysay Asian Awards on a world-wide competitive basis, with prizes totalling ₱30,000 yearly. The announcement of the project was timed to coincide with the first anniversary of the administration of President Magsaysay under whose patronage the awards have been created.

The competition formally opens as of January 1, 1955, and the awards for the winning entries will be made on December 30, 1955. There will be 12 prizes, nine for the best books and three for the best series of articles, the former to receive ₱3,000 each and the latter ₱1,000 each, payable in the national currency of the winning authors. Three prizes will be awarded for books on the Philippines, another three for books on any other Asian country, and the last three for books on Asia in general. One prize is for a series of not less than six articles on the general topic of Contemporary Problems and Progress in the Philippines, another on any other Asian country, and the third, on Asia as a whole.

Scholars, authors, and journalists of all nations without distinction are particularly invited to compete for the awards, although there is no limitation on the identity or qualifications of prospective participants. The books to be entered in the contest shall be limited to those published not later than the third quarter of 1955 and to manuscripts ready for publication. Any series of articles on the topics indicated, published in any newspaper or magazine in any country, before the last quarter of 1955, may be entered for the journalism awards.

December 30.—THE PRESIDENT relaxed the whole day today as the first year of his four-year term in Malacañang drew to a close with Rizal Day. He did not receive any caller and went over some state papers. He received several complaints against the nuisance of exploding fire-crackers.

Acting promptly upon numerous complaints, the President today issued a directive to all provincial governors, city mayors, and Constabulary commanders to ban the sale or explosion of big firecrackers which he classified as dynamites or explosives.

In telegrams transmitted this morning by Executive Secretary Fred Ruiz Castro, the President directed the provincial and city executives that the sale of *bawang,* "atomic bomb", "atomic bomb junior", and other big firecrackers by any person be stopped or banned immediately. He instructed local officials to direct all municipal mayors to instruct their chiefs of police and all men under them that any person of whatever age carrying or exploding the enlarged firecrackers be arrested and prosecuted accordingly.

The President, in a separate wire, also ordered Brig. Gen. Florencio Selga, chief of the Constabulary, to instruct all provincial commanders to cooperate with local governments in the implementations of his directive.

All radio stations were requested by Malacañang to make periodic spot announcements on the presidential directive beginning this day until Saturday night, January 1, 1955.

Secretary Castro said that the presidential ban became effective immediately upon its promulgation this morning and would last until January 6, 1955.

Meanwhile, Col. Napoleon D. Valeriano, senior military aide and commander of the presidential guards, dispatched to Caloocan, Rizal, this morning Major Porfirio Garcia of the Malacañang secret service and Capt. Dioscoro Santos of the intelligence section of the presidential guard batallion, to look into the case of Jose Ventura y Agustin, a former army captain, who was reported arrested by the Caloocan police for posing as a Malacañang agent and attempting to extort ₱20,000 from a Chinese businessman.

On orders from the President, Valeriano previously had alerted police forces of Manila and nearby cities and municipalities to be on look-out for

the former army officer in view of persistent reports received in Malacañang that this ex-army man had been posing as a Malacañang intelligence agent and extorting money from a number of persons.

After receiving word about the recent arrest of Ventura by the Caloocan police, Valeriano immediately sent two investigators to that town to look into the extent of the alleged misrepresentations and to assist in determining what criminal charges could be instituted against the man.

In the afternoon, the President drafted a letter commending Commissioner Manuel Manahan of the President's Complaints and Action Committee for effecting the early surrender of Luis M. Taruc last May. He also lauded the PCAC for "providing solutions to the age old tenancy conflicts which threatened the social structure of our country."

In the evening, the President left for Manila Hotel, where he addressed a large gathering of various civic organizations which gave a dinner in his honor.

Addressing a large gathering of various civic organizations in the Manila Hotel dinner, President Magsaysay disclosed the five-point objective of his administration.

"It must be recognized," he said, "that our democratic form of government imposes upon the public servant the distracting element of politics. There is nothing wrong with politics as such. It is an essential element of the party system and democratic process."

He warned, however, that "there is a tendency too frequently for the excitement of political competition to distract us from the serious business of government. At the present stage of our nation's history, this is a luxury we cannot afford," he pointed out.

In disclosing his five-point program of administration, the President said:

1. "Our paramount concern continues to be the security of our nation. Nothing must take precedence over the safeguarding of our freedom and independence."

2. "I am sworn to uphold the Constitution of the Republic and the law of the land . . . ."

3. "The purpose of government is to serve the total national interest with maximum efficiency and economy, at the same time to provide more of the social services which citizens of a democracy have a right to expect."

4. "We must expand our economy and make fullest use of our resources to meet the needs of our growing population and to achieve a decent minimum standard of living for our people."

5. "The foreign policy we have undertaken to carry out is one which commits us to active membership in the community of free nations. We propose to take fullest possible advantage of the means of securing peace, security, and economic development which such membership affords, and we accept the obligations it imposes."

Before delivering his address, President Magsaysay received a scroll from the leaders of the civic organizations, listing his achievements during the first year of his administration.

The President said, "Your list of the first year's accomplishments of this administration touches upon most, if not all, of these commitments and objectives. But I must emphasize that such accomplishments cannot be considered more than a beginning. Much more remains to be done, and, in some ways, there will be no end to the task."

President Magsaysay also aswered critics who had assailed him for the non-implementation of results of various investigations of venalities in the government.

He said, "if corruption is to be eliminated from our public life, charges must be investigated and either proved or discredited. To ignore them is to encourage the spread of corruption and to leave the stain of suspicion upon the innocent as well as the guilty."

He added, "Under this administration the law must run its course in orderly fashion. None must be denied complete protection of his legal rights and due process. I hold the office of Chief Magistrate under the Constitu-

tion. I do not have, nor would I accept, the mandate of dictatorship." Watch for the full text of the speech in the January 1955 issue of the *Gazette.*

December 31.—THE PRESIDENT this morning administered the oath of office to Miguel Cuaderno, who had been reappointed for another term of six years as governor of the Central Bank. Cuaderno's reappointment was signed by the President on December 21. His first term expires this day.

Following the ceremony which was held in Malacañang at 10 a.m., the President congratulated Gov. Cuaderno for his recent work in the United States, particularly his part as member of the technical staff of the Philippine trade mission in Washington and the credit arrangements he had made with American banks which had agreed to grant the Philippine Government substantial long-term loans at very low rates of interest to finance development projects here.

Cuaderno, however, expressed the belief that his apparent successes in his negotiatitions abroad had been mainly due to the high esteem with which the American people regarded the Philippine Chief Executive. He handed the President a medallon, a shining bronze replica of New York City's official seal, as a present from Mayor Robert Wagner to President Magsaysay.

Cuaderno also informed the President that 15 big American companies had signified their desire to set up branch factories in this country. He said that during his recent stay in the United States, he had felt a new respect for, and confidence on the part of foreign capitalists in, the Philippine Republic.

Earlier this morning, the President received Gov. Feliciano Leviste of Batangas, who reported on the progress of the installation of artesian wells. in different barrios in his province. During the call, the President handed the Batangas governor a ₱5,000-check for the puericulture center in the town of Lian. With Leviste were former Gov. Vicente Noble and Board Member Francisco G. Perez.

The President did not receive any other caller. He spent most of the morning in his private study with some important state papers which he wanted to act on before the New Year came around.

In the afternoon, the President directed Justice Secretary Pedro Tuason and Labor Secretary Eleuterio Adevoso to make a re-study of the several months old marine strike with a view to determining whether the circumstances would warrant the President's certifying the strike to the Court of Industrial Relations.

The officials were asked to determine anew whether the marine strike, which has dragged on for several months, was directly affecting the national interest. The President wanted the re-study of the case so that depending on the findings of the two department secretaries he would be guided accordingly as to the final action that he would take on the matter.

In the evening, the President looked again over the budget estimates submitted to him by the different executive departments. He did not stay up late to see the advent of 1955. He and the First Lady observed the New Year's Eve quietly.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 82

PRESCRIBING THE COLLECTION OF UNIFORM FEES IN CONNECTION WITH THE ISSUANCE OF PERMITS TO ENGAGE IN RETAIL BUSINESS UNDER THE PROVISIONS OF REPUBLIC ACT NO. 1180

Pursuant to the powers vested in me by law, and in order to compensate the additional services which city and municipal treasurers are called upon to perform in the implementation of Republic Act No. 1180, I, Ramon Magsaysay, President of the Philippines, do hereby order:

1. A fee of ₱2 is hereby authorized to be collected for the issuance of a permit to engage in the retail business in the Philippines and every association, partnership or corporation not wholly owned by citizens of the Philippines, who or which was actually engaged in the retail business on May 15, 1954.

2. For copies of official records and documents or other papers related to the filing of the verified statements by the persons, associations, partnerships or corporations mentioned in section 2 of Republic Act No. 1180, furnished private persons and entities, the schedule of fees authorized to be collected under Executive Order No. 528 dated September 1, 1952, shall be applicable.

Done in the City of Manila, this 29th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

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MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 83

AMENDING EXECUTIVE ORDER NO. 23 DATED APRIL 7, 1954, ENTITLED "PROVIDING AN AWARD OF ONE HUNDRED THOUSAND PESOS (₱100,000) FOR THE BEST METHOD OF ERADICATING RATS BY MEANS OF MICROORGANISM —VIRUS, BACTERIUM, BACILLUS OR FUNGUS —NOT DANGEROUS TO HUMAN BEINGS, ANIMALS AND PLANTS"

Paragraph 1 of Executive Order No. 23 dated April 7, 1954, is hereby amended to read as follows:

"1. The sum of ₱100,000 is authorized to be paid out of any existing appropriations for the Executive Office that may be lawfully used for the purpose, as prize or award to any person who can discover any microorganism—virus, bacterium, fungus, etc.—capable of effectively killing and exterminating rats that spread disease or destroy agricultural crops, products, foods, clothing and plants essential to the national economy and useful to the life, health and well-being of the people."

This order shall take effect as of April 7, 1954.

Done in the City of Manila, this 4th day of December, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 84

CREATING THE MUNICIPALITY OF SAINT BERNARD IN THE PROVINCE OF LEYTE

Upon the recommendation of the Provincial Board of Leyte and pursuant to the provisions of section 68 of the Revised Administrative Code, there is hereby created

in the province of Leyte a municipality to be known as the municipality of Saint Bernard consisting of the barrios of Himatagon, which shall be the seat of the municipal government, Atuyan, Ayahag, Bolodbolod, Cabac-an, Cabagawan, Carnaga, Catmon, Guinsaugon, Himbangan, Hindag-an Lepanto, Magbagacay, Mahayahay, Malibago, Panian, San Isidro, Sugangon, and Tambis, all of the municipality of Cabalian, same province.

The municipality of Cabalian shall have its present territory minus the portion thereof comprised in the barrios composing the municipality of Saint Bernard.

The municipality of Saint Bernard shall begin to exist upon the appointment and qualification of the mayor, vice-mayor and a majority of the councilors thereof and upon the certification by the Secretary of Finance that said municipality is financially capable of implementing the provisions of the Minimum Wage Law and providing for all the statutory obligations and ordinary essential services of a regular municipality, and that the mother municipality of Cabalian, after the segregation therefrom of the territory comprised in the municipality of Saint Bernard, can still maintain creditably its municipal government, meet all its statutory and contractual obligations and provide for essential municipal services.

Done in the City of Manila, this 9th day of December, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 85

ESTABLISHING THE MANILA PORT AREA RAT-PROOF BUILDING ZONE

WHEREAS, it appears necessary and advisable to amend existing regulations for rat control in the Manila Port District to prevent the introduction of bubonic plague;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby designate both the Manila South Port

District and the Manila North Port District—comprising the areas bounded on the south by the 25th Street; bounded on the east, by the Bonifacio Drive in the South Port District and extending to Dewey Boulevard Extension in the North Port District and as far north as the Reclamation of the North District; and bounded on the west, by the Manila Bay—the "Manila Port Area Rat-Proof Building Zone" within the limits of which only rat-proof building construction made of durable and hard materials, such as reinforced concrete, bricks, iron, steel or other permanent similarly durable and hard materials shall be allowed: *Provided,* That doors with metal plates on base, door and window frames, roof trusses, and similar portions of a building may be constructed of wood: *Provided, further,* That mamposteria (adobe), asbestos boards and their equivalents shall not be considered as satisfactory building materials.

Within the limits of this zone, no stable, pigs, chickens, or other fowls or domestic animals shall be kept, the food for which services as food for rodents as well, and no domicile shall be maintained.

The preparation, cooking and selling of food within the area shall be authorized only in designated buildings, the site of construction of which shall be determined by a committee to be headed by the Chairman of the Port Commission with the Commissioner of Customs, the Director of Health, the Director of Quarantine and the City Health Officer of Manila, as members. The committee may allow the preparation and selling of food in establishments already existing provided such establishments are housed in buildings which conform to the rat-proof building specifications stipulated in this Order and the kitchens of which are adequately protected against insect infestation. The operation of food shops or restaurants so authorized by the committee shall be strictly under the jurisdiction and supervision of the City Health Officer of Manila, who shall promulgate rules and regulations covering the operation of such establishments to be approved by the Secretary of Health.

All leases of land within the Manila Port Area Rat-Proof Building Zone shall be subject to the conditions mentioned in this Executive Order to insure the exclusion and prevent the harborage of rats therein to the satisfaction of the Director of Health. Plans for proposed construction shall conform to all existing ordinances of the City of Manila not in conflict with the provisions of this Executive Order and shall bear the approval of both the Director of Public Works and the Director of Health, and the building hereinafter constructed shall not be occupied or used for any purpose whatsoever until the

Director of Public Works and the Director of Health shall have certified the work to be satisfactory for the purpose of rat prevention.

This Order supersedes Executive Order No. 512, dated July 1, 1952.

Done in the City of Manila, this 15th day of December, in the year of our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 86

CREATING THE MUNICIPALITY OF BOTOCAN IN THE PROVINCE OF LAGUNA

Pursuant to the provisions of section 68 of the Revised Administrative Code, there is hereby created in the Province of Laguna a municipality to be known as the municipality of Botocan consisting of the barrios of Botocan, which shall be the seat of the municipal government, Bakia, Bitaoy, Burgos, Gagalot, Isabang, Piit, Rizal, and Taytay, all of the municipality of Majayjay, same province.

The municipality of Majayjay shall have its present territory minus the portion thereof comprised in the barrios composing the municipality of Botocan.

The municipality of Botocan shall begin to exist upon the appointment and qualification of the mayor, vice-mayor and a majority of the councilors thereof and upon the certification by the Secretary of Finance that said municipality is financially capable of implementing the provisions of the Minimum Wage Law and providing for all the statutory obligations and ordinary essential services of a regular municipality, and that the mother municipality of Majayjay, after the segregation therefrom of the territory comprised in the municipality of Botocan, can still maintain creditably its municipal government, meet all its statutory and contractual obligations and provide for essential municipal services.

Done in the City of Manila, this 15th day of December, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 97

EXCLUDING FROM THE OPERATION OF EXECUTIVE ORDER NO. 67, SERIES OF 1912, WHICH ESTABLISHED THE IWAHIG PENAL COLONY, SITUATED IN THE MUNICIPALITY OF PUERTO PRINCESA, PROVINCE AND ISLAND OF PALAWAN, A CERTAIN PARCEL OF LAND EMBRACED THEREIN AND DECLARING THE SAME, AS THE SITE FOR THE TAGUMPAY SETTLEMENT, OPEN TO DISPOSITION FOR SETTLEMENT PURPOSES, PREFERENCE TO BE GIVEN TO QUALIFIED AND DESERVING LANDLESS COLONISTS (PRISONERS) AND RELEASED COLONISTS IN THE ACQUISITION OF LOTS THEREIN, SUBJECT TO THE PROVISIONS OF THE PUBLIC LAND ACT

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the authority vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby exclude from the operation of Executive Order No. 67, series of 1912, which established the Iwahig Penal Colony, situated in the municipality of Puerto Princesa, province and island of Palawan, a certain parcel of land embraced therein and declare the same, as the site for the Tagumpay Settlement, open to disposition for settlement purposes, preference to be given to ualified and deserving colonists (prisoner) and released colonists in the acquisition of lots therein, subject to the provisions of the Public Land Act, which parcel of land is more particularly described to wit:

"A parcel of land situated in the Inagawan Sub-Colony, Iwahig Penal Colony Reservation, municipality of Puerto Princesa, province and island of Palawan, bounded on the NE., by Inagawan Sub-Colony;

on the SE., by National Highway; on the SW., by Public Land; and on the NW., by Penal Colony Reservation.

"Containing an approximate area of 10,666,018 square meters, more or less."

The Directors of the Bureau of Prisons and the Bureau of Lands are authorized to promulgate the necessary rules and regulations for the proper implementation of this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 29th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 98

DECLARING MONDAY, DECEMBER 13, 1954, AS A SPECIAL PUBLIC HOLIDAY IN THE MUNICIPALITY OF MAGALANG, PAMPANGA

WHEREAS, the ninety-fifth anniversary of the creation of the municipality of Magalang, Pampanga, falls on December 13, 1954; and

WHEREAS, the people of said municipality desire to be given full opportunity to celebrate the day with appropriate ceremonies;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the authority vested in me by section 30 of the Revised Administrative Code, to hereby declare Monday, December 13, 1954, as a special public holiday in the municipality of Magalang, Pampanga.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 4th day of December, in the year of Our Lord, nineteen hundred and fifty-four, of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 99

DECLARING THE PERIOD FROM DECEMBER 26 TO 31, 1954, AS PHILATELIC WEEK

In order to commemorate the centenary of the first postage stamp issued in the Philippines in 1854, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare the period from December 26 to 31, 1954, as Philatelic Week.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 15th day of December, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 100

AMENDING PROCLAMATION NO. 369 DATED FEBRUARY 13, 1953, BY DECLARING THE LAST WEEK OF FEBRUARY OF EVERY YEAR, INSTEAD OF THE PERIOD FROM MARCH 15 to 21, AS PHILIPPINE INDUSTRIAL WEEK

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby amend Proclamation No. 369 dated February 13, 1953, by declaring the last week of February of every year, instead of the period from March 15 to 21, as Philippine Industrial Week.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 15th day of December, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 101

REVOKING PROCLAMATION NO. 359 DATED DECEMBER 16, 1952, AND RESERVING AS SITE OF THE EDUCATION CENTER THE PARCELS OF THE PUBLIC DOMAIN THEREIN RESERVED, SITUATED IN THE CITY OF MANILA

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act No. 141, as amended, I hereby revoke Proclamation No. 359 dated December 16, 1952, and reserve the parcels of the public domain embraced therein as sites of the Education Center, subject to private rights, if any there be, situated in the City of Manila.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 15th day of December, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 102

EXTENDING THE PERIOD FOR THE NATIONAL FUND CAMPAIGN OF THE LIBERTY WELLS ASSOCIATION UP TO JANUARY 18, 1955

WHEREAS, the period from November 5 to December 18, 1954, has been designated for the national fund campaign of the Liberty Wells Association under Proclamation No. 88 dated November 1, 1954;

WHEREAS, it appears that the association needs additional time to carry out its canipaign successfully;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby extend the period for the national fund campaign of the Liberty Wells Association up to January 18, 1955.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 17th day of December, in the year of Our Lord, nineteen hundred and fifty-four, and of the Indepedendence of the Philippines, the ninth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 103

DECLARING FRIDAY, DECEMBER 31, 1954, AS A SPECIAL PUBLIC HOLIDAY

WHEREAS, the thirtieth day (Thursday) of December, 1954, and the first day (Saturday) of January, 1955, being holidays, the thirty-first day (Friday) of December, 1954, may be declared a special public holiday to enable the people to enjoy an uninterrupted Christmas holiday without prejudice to the public interests;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by section 30 of the Revised Administrative Code, do hereby proclaim Friday, December thirty-first, nineteen hundred and fifty-four, as a special public holiday.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 27th day of December, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 84

DIRECTING THE DEPARTMENT OF FOREIGN AFFAIRS, THE GENERAL AUDITING OFFICE, AND THE BUREAU OF CIVIL SERVICE, TO BE GUIDED CLOSELY BY REPUBLIC ACT NO. 708 IN THE ADMINISTRATION OF THE DEPARTMENT OF FOREIGN AFFAIRS AND THE FOREIGN SERVICE, PARTICULARLY IN THE SELECTION, PROMOTION, AND ASSIGNMENT OF PERSONNEL AND TO STRICTLY ENFORCE THE PROVISIONS OF SAID ACT

WHEREAS, the public interest requires that the Foreign Service of the Republic be staffed by qualified personnel of established competence and integrity;

WHEREAS, in order to achieve this objective and to provide guarantees for the security of their tenure of office, it is necessary to insure that appointments of said personnel are based on merit;

WHEREAS, to preserve efficiency and maintain morale of said personnel, it is necessary that appointments, promotions and assignments in the service be based on demonstrated ability which shall be ascertained in accordance with existing laws, rules and regulations;

WHEREAS, Republic Act No. 708, otherwise known as the "Foreign Service Act of the Philippines" was enacted to

carry out the foregoing objectives, and requires, among other things, that appointments of Foreign Affairs Officers shall be made after competitive examinations conducted by the Board of Foreign Service Examiners (section 1 (*c*), Part B, Title III).

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby direct the Department of Foreign Affairs, the General Auditing Office, and the Bureau of Civil Service, to be hereafter guided closely by Republic Act No. 708, in conjunction with applicable civil service rules, in the administration of the Department of Foreign Affairs and the Foreign Service, particularly in the selection, promotion and assignment of its personnel and to strictly enforce the provisions of said Act.

The Secretary of Foreign Affairs is also directed to proceed as soon as possible with the organization of the Board of Foreign Service Examiners which shall enter into the immediate performance of its duties prescribed in section 2, Part B, Title II, of the aforementioned Act.

Done in the City of Manila, this 26th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 85

MODIFYING ADMINISTRATIVE ORDER NO. 51, DATED AUGUST 5, 1954, BY REDUCING THE PERIOD OF THE SUSPENSION OF PROVINCIAL GOVERNOR GEDEON G. QUIJANO OF MISAMIS OCCIDENTAL

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby modify, in view of the attendant circumstances of the case, the dispositive portion of Administrative Order No. 51, dated August 5, 1954, by reducing the penalty of suspension for a period of 6 months therein imposed upon the respondent to suspension already undergone, corresponding to the period from August 6 to November 30, 1954, inclusive.

Done in the City of Manila, this 27th day of November, in the year of Our Lord, nineteen hundred and fifty-four, and of the Indepence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 86

REMOVING MR. FILEMON F. BUSA FROM OFFICE AS CHIEF OF POLICE OF BUTUAN CITY

This refers to the administrative cases against Mr. Filemon F. Busa, Chief of Police of Butuan City, for (1) "official misconduct" on three counts, to wit: (*a*) electioneering; (*b*) leaving the territory of Butuan City without the permission of the City Mayor; and (*c*) betting in a licensed cockpit, and (2) "acts of immorality".

Referring to the first charge, I find that Count (*a*) thereof—electioneering—has not been sufficiently substantiated by the evidence of record. As regards Counts (*b*) and (*c*), however, which are interrelated, the evidence shows that on February 3, 1954, which was the date of the town fiesta of the municipality of Cabadbaran, Agusan, the respondent left the territorial limits of the City of Butuan and went to Cabadbaran without the permission of the City Mayor, and that, once in Cabadbaran, he entered the town cockpit and made bettings on cockfights.

The acts of the respondent in entering the Cabadbaran cockpit and betting in the cockfights although, in a strict sense, incompatible with the dignity of his position as chief of police, cannot legally be made the basis of administrative action against him for the reason that betting in licensed cockpits is legal. However, his leaving the territorial jurisdiction of his city without the permission of the City Mayor constitutes "abandonement of post". His guilt is aggravated by the fact that as Chief of Police of the then municipality of Butuan (now Butuan City) he was also found guilty of "abandonement of post" for having left, without official sanction, the territorial limits of his municipality and gone to the municipality of Cabadbaran, and for this irregularity he was required to resign with prejudice to reinstatement as peace officer.

The decision, however, was reconsidered by the Commissioner of Civil Service in the sense that instead of being required to resign, he made to pay a fine equivalent to one month's salary, with the stern warning that repetition of the offense would be considered sufficient cause for his dismissal.

As regards charge No. 2, it has been proved that the respondent became a widower in 1947 when his first wife, Fidela Dellorosa died; that on December 27 of the same year, he married Polquiera Esma of Macrohon, Leyte; that a few weeks after this second marriage, he deserted his wife, for which reason she left the conjugal dwelling located at Silongan Street, Butuan City, and went back to her hometown where she is still living; and that notwithstanding the fact that his marriage to said Polquiera Esma has not been legally dissolved, he has been, since 1953, living openly and publicly in his own house with another woman named Consuelo Valmores, the two holding themselves out to the community as husband and wife.

In view of all the foregoing, I find the respondent Filemon F. Busa, Chief of Police of Butuan City, guilty of misconduct in office by abandoning his post and of immorality. Having thereby shown himself unfit to remain in the public service as a peace officer, he is hereby removed from office effective upon receipt of notice hereof.

Done in the City of Manila, this 2nd day of December, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 87

MODIFYING ADMINISTRATIVE ORDER NO. 86 DATED DECEMBER 2, 1954 BY CONSIDERING MR. FILEMON F. BUSA, CHIEF OF POLICE OF BUTUAN CITY, AS RESIGNED FROM THE SERVICE

In view of the length of service rendered to the government by the respondent, Mr. Filemon F. Busa, Chief of Police of Butuan City, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by

law, do hereby modify Administrative Order No. 86, dated December 2, 1954, removing him from office, by considering him as resigned from the service, without prejudice to his receiving whatever rights and benefits he may be entitled to under existing laws.

Done in the City of Manila, this 7th day of December, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 88

CREATING A SPECIAL COMMITTEE ON BACKPAY CLAIMS

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby create a Special Committee on Backpay Claims to introduce such innovations and make such changes, conformably with existing laws, in the personnel assignment, operational set-up, and office policies and procedures of the Backpay Unit, Bureau of the Treasury, Department of Finance, as may bring about the speedy and efficient processing, disposition and satisfaction of backpay claims under Republic Act No. 304, as amended by Republic Acts Nos. 800 and 897.

1. The Committee shall be composed of the following:

Mr. Gregorio Licaros	Chairman
Mr. Nicanor Maronilla-Seva	Member
Capt. Antonio S. Vinluan	Member

2. The Treasurer of the Philippines and all other officials and employees at the Backpay Unit, Bureau of the Treasury, are hereby enjoined to extend full assistance and cooperation to the Special Committee and its Consultants on Backpay Claims. Technical assistance in the work of this Committee will be furnished by the Budget Commissioner.

3. The Committee is further authorized to call upon any department, bureau, office, agency or instrumentality of the Government, or upon any officer or employee thereof, for such assistance as it may need in the performance of its work.

4. The Committee may submit partial reports and recommendations from time to time, but it shall complete and submit a final report not later than six months from the date hereof. Its final report shall state among other things the conditions of affairs in the Backpay Unit before and after the implementation of the remedial measures deemed necessary and practicable by the Committee.

Done in the City of Manila, this 7th day of December, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 89

DIRECTING THE COMMITTEE CREATED UNDER ADMINISTRATIVE ORDER NO. 82, DATED NOVEMBER 23, 1954, TO STUDY THE PRACTICABILITY OF ESTABLISHING AN INDUSTRIAL ZONE OUTSIDE OF THE CITY OF MANILA

Pursuant to the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby direct the committee created under Administrative Order No. 82, dated November 23, 1954, to study also the practicability of establishing an industrial zone outside of the City of Manila, but close enough to it to be easily accessible to the people thereof, in order to prepare for the expansion of industrial activities that may be brought about by the impending flow of foreign capital into the Philippines caused by favorable business conditions.

The Committe shall submit its report and recommendations within the shortest possible time.

Done in the City of Manila, this 15th day of December, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the ninth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Executive Office

PROVINCIAL CIRCULAR
(Unnumbered)

November 18, 1954

GAME LAW, ACT NO. 2590, AS AMENDED, AND ALL ORDERS, RULES AND REGULATIONS, FOR THE PROTECTION OF GAME AND BIRD, ENFORCEMENT OF—

To all Provincial Governors and City Mayors:

Provincial governors and city mayors are hereby urged to take proper and effective steps to wage vigorous campaign against the violators of Act No. 2590, as amended, and all orders, rules and regulations, for the protection of game, fish and birds with a view to curtailing the pernicious practice of ruthlessly killing wild game and protected birds and fish. This should, of course, be done in collaboration with the Chief of Constabulary and the Director of Forestry, as executive officers to supervise the enforcement of the Game Law and all orders, rules and regulations for the protection of game, birds, and fish. It is suggested that the forestry officers or the proper representatives of the Secretary of Agriculture and Natural Resources in your respective provinces and cities be consulted, if necessary, for the purpose of ascertaining from them what are the close seasons for game in the province or city and such other information as may be pertinent to serve as guide in the campaign against violators of the law for the protection of game, birds, and fish.

It is requested that all local law-enforcement officers in your respective jurisdiction specially the members of the local police who, under section 10 of Act No. 2590, are the "deputy game wardens with full authority to enforce the provisions of the said Act and to arrest the offenders against it," be enjoined to enforce the above-mentioned law, orders, rules and regulations.

Provincial Governors are requested to transmit the contents hereof to the municipal and municipal district mayors in their respective provinces for proper implementation.

By authority of the President:

ENRIQUE C. QUEMA
Assistant Executive Secretary

49275——2

PROVINCIAL CIRCULAR
(Unnumbered)

November 19, 1954

NATIONAL FAMILY WEEK, 1954
CELEBRATION OF—

To all Provincial Governors and City Mayors:

In accordance with Proclamation No. 147, dated September 30, 1949, the National Family Week is celebrated during the first week of December of every year. The National Family Life Workshop of the Civic Assembly of Women of the Philippines, with the cooperation of other civic and welfare organizations, is again sponsoring this year the Sixth National Family Week Celebration.

The theme, slogan and daily emphasis of the Week are as follows:

THEME: "Strong Families Make a Strong Nation"

SLOGAN: "Family Thrift Opens Opportunities for Richer and Happier Living"

EMPHASES:

December 1, Wednesday—Economic Security Day
"Wise Spending Today Insures Savings for a Better Living"

December 2, Thursday—Nutrition Day
"Be Wise—Economize—Be Nutrition Wise"

December 3, Friday—Physical Health Day
"Prevention is Cheaper than Cure"

December 4, Saturday—Mental Health Day
"Mental Health is a Family Affair"

December 5, Sunday—Spiritual Health Day
"Save a Soul Especially Your Own"

December 6, Monday—Parents' Day
"Family Thrift is a Shared Responsibility"

December 7, Tuesday—Community Day
"Know and Use Wisely Our Community Resources"

In said Proclamation, all citizens, churches, schools, and civic organizations are called upon to observe the Week with appropriate ceremonies so as to awaken every citizen to the importance of the well-being of each and every member of the family in particular and of our nation in general. As Chief Executive of that province/city, the success of the celebration will depend upon your active cooperation and wholehearted support for the promotion of the program of activities for each day.

The National Family Life Workshop is distributing Handbooks containing suggestive activities to carry out during the Family Week.

It is urged that the contents hereof be disseminated to all the local officials under your jurisdiction for the proper observance of the Week.

FRED RUIZ CASTRO
Executive Secretary

PROVINCIAL CIRCULAR
(Unnumbered)

November 23, 1954

NATIONAL BOOK WEEK, LAST WEEK OF NOVEMBER 1954, OBSERVANCE OF—

To all Provincial Governors and City Mayors:

The National Book Week is observed during the last week of November, every year, pursuant to Proclamation No. 109, series of 1936. As in the past, the Philippine Library Association is taking the lead in the observance of the Week this year. In this connection, attention is invited to our Provincial Circular (Unnumbered), dated November 2, 1953, concerning the same subject.

The theme selected for this year's National Book Week is READ AND BE FREE, and a program in Manila has been prepared which may be termed as a "What is Freedom" program. Outstanding citizens of the country have been invited by the Philippine Library Association to talk on the following subjects:

1. Freedom and the press
2. Freedom and religion
3. Freedom and the law
4. Freedom and the progressives
5. Freedom and education
6. Freedom and the citizen
7. Freedom and the library

With the above subjects, it is hoped that the people might be able to have a clearer definition of freedom from the standpoint of our countrymen. In view hereof and in order that there might arise a national awakening as to the true importance and implications of freedom, it is urged that provincial governors and city mayors, and also municipal mayors, organize committees to take charge of a similar program during the National Book Week this year.

ENRIQUE C. QUEMA
Assistant Executive Secretary

CIRCULAR

December 3, 1954

PROGRESS REPORT ON THE NATIONAL FUNDS CAMPAIGN OF THE LIBERTY WELLS ASSOCIATION, SUBMISSION OF—

To all Provincial Governors and City Mayors:

Fifteen days from now the fund campaign of the Liberty Wells Association will come to a close. Although the solicitation terminates on December 18, 1954, this does not mean however that amounts promised will remain uncollected. What has been promised may be collected even after said date. It is hoped that each and every local official is sparing no effort and leave no stone unturned with a view to making the campaign a complete success if only to show that they are 100% in support of the pet project of the President.

Two meetings have been called by the Campaign Chairman to be held, one on December 7 and another on December 23, 1954, for the purpose of submitting reports as to how the campaign is progressing. It will, therefore, be appreciated if you can furnish the undersigned immediately upon receipt hereof with a progress report of the campaign in that province or city and information as to the amount collected and whether the amount allocated to that province or city can be fully subscribed or exceeded.

SOFRONIO C. QUIMSON
Technical Assistant and In-Charge
Civil Affairs
and
Chairman, Provincial and Chartered
Cities Division
Liberty Wells Association

PROVINCIAL CIRCULAR
(Unnumbered)

December 8, 1954

NARIC REGULATIONS NO. 2—REQUISITIONING OF RICE AND DISTRIBUTION THEREOF IN CITIES, PROVINCES AND MUNICIPALITIES.

To all Provincial Governors and City Mayors:

For your information and guidance, there is enclosed herewith copy of Regulations No. 2 of the National Rice and Corn Corporation, dated November 10, 1954, governing the requisitioning of rice and distribution thereof in the cities, provinces and municipalities.

It may be stated that provincial, city and municipal treasurers have already been furnished with copies of the Regulations in question by the Department of Finance.

Provincial Governors are urged to transmit the contents of said Regulations to all municipal and municipal district mayors under their jurisdiction.

FRED RUIZ CASTRO
Executive Secretary

* * *

NATIONAL RICE AND CORN CORPORATION
MANILA

NARIC REGULATIONS NO. 2

November 10, 1954

REGULATIONS GOVERNING THE REQUISITIONING OF RICE AND DISTRIBUTION THEREOF IN CITIES, PROVINCES AND MUNICIPALITIES.

I. GENERAL

These regulations are published for the information, guidance, and compliance of all concerned, prescribing the procedure to be followed in the requisitioning of rice from the Naticnal Rice and Corn Corporation and the manner of distribution to eligible consumers in order to prevent the hoarding and black-marketing of this important cereal as envisioned by Republic Act No. 663. They include policies and instructions previously issued which have not been changed and shall rescind those which are in conflict with the same.

II. APPLICABILITY AND EFFECTIVITY

These regulations shall take effect immediately after promulgation.

These regulations shall apply to all NARIC Distributing agencies particularly the Provincial Treasurers, Municipal Treasurers, ACCFA, PRISCO and SWA provincial agencies.

III. POLICY

The National Rice and Corn Corporation will only release rice on the basis of appropriate requisition filed by authorized officials of Provincial and Municipal Governments and other government entities in the manner hereinafter prescribed.

IV. PRICES

Until further order, the prices of native rice (Macan No. 2) is P0.85 per ganta, retail and P0.80 per ganta wholesale, f.o.b. Manila. Prices of imported rice shall be announced from time to time by the Corporation in an appropriate price bulletin or may be furnished upon request.

V. PROCEDURE IN PROVINCIAL REQUISITIONS

(*a*) Municipal Treasurers shall file their requisition through their respective Provincial Treasurers who will consolidate the requisitions of the various municipalities within his province on B. S. Form No. 1 (Revised No. 8, 1952) indicating clearly the number of cavanes desired, the destinations, and consignees. The various consignees will be advised by the NARIC preferably by telegraph, if there is a telegraphic communication, or, if not, by the earliest possible mail of the quantity of rice shipped, the price f.o.b. Manila. In the event the Provincial Treasurer is not the consignee, he will likewise be advised by mail.

(*b*) In excepticnal cases, requisitions may be submitted directly by Municipal Treasurers so long that the corresponding B. S. Form No. 1 is approved by the Provincial Treasurer.

(*c*) City Treasurers may file their requisitions directly to the National Rice and Corn Corporation, Manila by using B. S. Form No. 1 (Revised November 8, 1952) following the procedure above outlined for Provincial Treasurers.

(*d*) Requisitions of provinces and municipalities shall be accompanied by cash or certified check drawn by the Provincial or City Treasurers in favor of the National Rice and Corn Corporation covering the total cost of the rice so requisitioned.

VI. FUNDS

Treasurers of cities, provinces or municipalities having no specific funds available for the purchase of ricc, are enjoined to avail of the provisions of section 28, of the Manual of Instructions to Treasurers in order to provide a continuous supply of rice for the needy inhabitants within their respective jurisdiction. Under the aforesaid provisions of the Manual of Instructions, in relation to section 438 of the Compilation of Provincial Circulars by the defunct Executive Bureau, Provincial Treasurers *may create special reimbursable account* by advancing any funds in their possession under the heading "Subsistence supplies, A–2–2 Account". This provision is hereunder quoted for your ready reference:

> "SEC. 28. *Subsistence supplies, A–2–2.*— Subsistence supplies as rice, corn, fodder canned goods, and other commodities acquired for subsistence purposes for sale or issue to other governmental branches, institutions or offices. As many of the items comprised in the account SUBSISTENCE supplies are of a perishable nature, purchases for stock shall be limited to that which will be needed inside of thirty days. Overstocking with this class of supplies will be severely dealt with".

VII. PROCEDURE IN REQUISITIONING BY PRISCO, ACCFA AND SWA

Provincial branches of these agencies shall submit their requisitions through their respective Head Offices in Manila which in turn will consolidate them in B. S. Form No. 1 for submission to the NARIC accompanied by cash or certified check payable to said Corporation. The procedure outlined in paragraph No. V(*a*) will be applicable in so far as they are not inconsistent hereto.

VIII. PROCEDURE IN DISTRIBUTING NARIC RICE IN PROVINCES AND MUNICIPALITIES

1. When a municipality undertakes the distribution of NARIC rice, the Municipal Mayor shall, through the assistance of Councilors and Barrio Lieutenants, make a census of all needy families in his town who need low-priced government rice.

2. These census report from the various districts and/or barrios within the municipality must be compiled by the Municipal Mayor in a master list to be denominated NARIC ENTITLEMENT ROSTER forwarding the original to the NARIC and furnishing copies thereof to the Municipal Treasurer, Provincial Treasurer, ACCFA, PRISCO and SWA Agencies if there are any in the province. For the sake of uniformity the following form of roster is hereby prescribed:

REPUBLIC OF THE PHILIPPINES
Province of .....
Municipality of .....

NARIC ENTITLEMENT ROSTER

Name of family head	Barrio or district	No. of dependents	Authorized representative

I hereby certify that the foregoing list containing of ..... pages contains the names of needy families of this municipality who according to the best of my knowledge are entitled to buy NARIC rice.

.....
Municipal Mayor

3. The Municipal Treasurer will then issue NARIC BUYING CARD to the individual family head and/or representative based from the NARIC ENTITLEMENT ROSTER submitted to him by the Municipal Mayor care being taken that the stubs of these Buying Cards are kept by him in a suitable index filing card which will serve as his ready reference in the actual distribution of rice. These cards must, as much as possible, be thick and handy to assure the holder a certain degree of convenience, durability, and permanence with entries substantially in accordance with the attached sample.

4. Whenever rice is sold and/or distributed to eligible purchasers the Municipal Treasurer shall keep a record of the quantity sold by filing in the blanks at the back of the Buying Cards.

5. In municipalities, or cities where the PRISCO, ACCFA, or SWA undertakes the retail distribution of NARIC rice directly to eligible purchasers, the same procedures shall be observed by these agencies with respect to the keeping of record of quantity sold as outlined in the preceding 4th paragraph.

6. After every distribution period, preferably at the end of every month, the Municipal Treasurer, ACCFA, PRISCO, or SWA Agencies shall submit to the NARIC a summary of sales taken from the entries of purchases made at the back of the Buying Cards of eligible purchasers described in paragraph 4 above. Copies of this summary of sales must be furnished the Provincial Treasurer in case the distribution is done by the ACCFA, PRISCO, or SWA Agencies. Failure to submit this report may cause the suspension of the release of subsequent allocations. In order to achieve uniformity this summary of sales must conform substantially with the following:

REPUBLIC OF THE PHILIPPINES
Province of .....
Municipality of .....

SUMMARY OF SALES OF NARIC RICE

(Covering the period from ..... to ....., inclusive)

Name of family head	Barrio or district	No. of dependents	Quantity purchased	Unit price	Total amount paid	Date of purchase
TOTAL						

I hereby certify that the foregoing is the true and complete record of the total sales of NARIC rice made by me to eligible purchasers in this municipality during the period indicated.

.....

Municipal Treasurer, ACCFA, PRISCO or SWA Branch Manager

7. In no case shall Municipal Treasurers, ACCFA, PRISCO and SWA Agencies sell rice to any person, individual, or representative of any institution who is not a bonafide holder of a NARIC Buying Card.

IX. REITERATION OF A STANDING DIRECTIVE

The attention of Provincial and Municipal Officials is respectfully invited to the provisions of section 438 of the Compilation of Provincial Circulars of the defunct Executive Bureau in regard to the obligation of local governments to keep a sufficient supply of rice during times of scarcity which in effect authorizes Provincial Treasurers to requisition this cereal for resale through Municipal Treasurers within their respective jurisdictions.

JUAN O. CHIOCO
Chairman-General Manager

CIRCULAR LETTER

December 11, 1954

SWORN DECLARATION OF ASSETS AND LIABILITIES, SUBMISSION OF—

To all Heads of Departments, chiefs of bureaus and offices, heads of agencies and instrumentalities of the government, directors, managers or executive heads of all government-owned or controlled corporations, provincial governors and city mayors:

The records of this Office show that some Secretaries and Undersecretaries of Departments, chiefs and assistant chiefs of bureaus and offices, heads of agencies and instrumentalities of the Government, directors, managers or executive heads of government-owned or controlled corporations, provincial governors and city mayors have not filed their sworn statements of assets and liabilities as required in Administrative Order No. 1, dated January 5, 1954. It will be noted that this Order requires that such declarations of assets and liabilities should have been accomplished and submitted on or before January 31, 1954, as to those already in the government service on or before said date, and upon entrance to duty as to those that were thereafter appointed, and that such declarations shall be renewed annually.

In view hereof, it is the desire of the President that those officials mentioned above who have not so far complied with the provisions of this Administrative Order file immediately with this Office their sworn statements of assets and liabilities as of January 31, 1954, as to those already in the government service on or before said date and upon entrance to duty as to those who have thereafter been appointed, and that all concerned should file with this Office on or before January 31, 1955, another statement as of January 1, 1955.

The President also desires strict compliance hereafter with the provisions of this Administrative Order, otherwise he would be constrained to take disciplinary action against anyone not complying with the provisions thereof.

FRED RUIZ CASTRO
Executive Secretary

Department of Justice

ADMINISTRATIVE ORDER NO. 158

November 13, 1954

DETAILING JUDGE JOSE P. VELUZ OF MISAMIS ORIENTAL AND CAGAYAN DE ORO CITY TO THE PROVINCE OF LANAO AND THE CITIES OF DANSALAN AND ILIGAN TO PROMULGATE HIS DECISION IN A CRIMINAL CASE WHICH WAS PREVIOUSLY TRIED BY HIM.

In the interest of the administration of justice and with the previous approval of the Supreme Court, the Honorable Jose P. Veluz, Judge of the Fifteenth Judicial District, Court of First Instance of Misamis Oriental and Cagayan de Oro City, is hereby detailed to the province of Lanao and the cities of Dansalan and Iligan, same judicial district, beginning November 22, 1954, or as soon thereafter as practicable, for the purpose of promulgating his decision in Criminal Case No. 1021 which was previously tried by him while assigned there.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 159

November 9, 1954

DETAILING JUDGE MANUEL P. BARCELONA OF BATANGAS AND LIPA CITY TO THE CITY OF BAGUIO AND MOUNTAIN PROVINCE TO PROMULGATE HIS DECISIONS IN THE CASES WHICH WAS PREVIOUSLY TRIED BY HIM.

In the interest of the administration of justice and with the previous approval of the Supreme Court, the Honorable Manuel P. Barcelona, Judge of the Eighth Judicial District, Court of First Instance, Batangas and Lipa City, is hereby detailed to the City of Baguio and Mt. Province, 2nd Judicial District, beginning November 26, 1954, or as soon thereafter as practicable, for the purpose of pro-

mulgating his decisions in the cases previously tried by him.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER No. 160

November 16, 1954

AUTHORIZING JUDGE AMBROSIO DOLLETE OF BATAAN TO HOLD COURT IN THE PROVINCE OF ILOILO AND ILOILO CITY TO TRY ALL KINDS OF CASES AND TO ENTER JUDGMENTS THEREIN.

In the interest of the administration of justice and pursuant to the provisions of section 51 of Republic Act No. 296, as amended, the Honorable Ambrosio Dollete, Judge of the Fifth Judicial District, Court of First Instance of Bataan, is hereby authorized to hold court in the province of Iloilo and Iloilo City, Eleventh Judicial District, for a period of three months beginning December 1, 1954, or as soon thereafter as practicable, for the purpose of trying all kinds of cases and to enter judgments therein.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER No. 161

November 20, 1954

AUTHORIZING JUDGE EUSEBIO RAMOS OF MINDORO ORIENTAL, MINDORO OCCIDENTAL AND MARINDUQUE TO HOLD COURT IN THE MUNICIPALITIES OF ROXAS AND PINAMALAYAN, MINDORO ORIENTAL.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, as amended, the Honorable Eusebio Ramos, Judge of the Eighth Judicial District, Court of First Instance of Mindoro Oriental, Mindoro Occidental and Marinduque, is hereby authorized to hold court in the municipality of Roxas, Mindoro Oriental, for the first fifteen days of December, 1954, and in the municipality of Pinamalayan, same province, for the last half of the month, for the purpose of trying all kinds of cases and to enter judgments therein.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER No. 162

December 1, 1954

DESIGNATING SPECIAL ATTORNEY BALDOMERO M. VILLAMOR, DEPARTMENT OF JUSTICE AS ACTING CITY ATTORNEY OF QUEZON CITY TO INVESTIGATE AND PROSECUTE A CERTAIN CRIMINAL CASE.

In the interest of the public service and pursuant to the provisions of section 1679 of the Revised Administrative Code, Mr. Baldomero M. Villamor, Special Attorney, Department of Justice, is hereby designated Acting City Attorney of Quezon City for the purpose of investigating and prosecuting Criminal Case No. Q-254 if the Court of First Instance of said City, entitled "People *vs.* Elizabeth Wilson, et al.," for malversation of public property thru bribery, effective immediately and to continue until further orders.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER No. 163

December 1, 1954

DESIGNATING SPECIAL ATTORNEY BALDOMERO M. VILLAMOR, DEPARTMENT OF JUSTICE, TO ASSIST THE CITY FISCAL OF THE COURT OF FIRST INSTANCE OF MANILA.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, Mr. Baldomero M. Villamor, Special Attorney, Department of Justice, is hereby designated to assist the City Fiscal of Manila in the investigation and prosecution of Criminal Cases Nos. 24290 and 25173 of the Court of First Instance of said City, both entitled "People *vs.* Felipe Soria, et al.", for violation of customs laws, effective immediately and to continue until further orders.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER No. 165

December 2, 1954

DESIGNATING PROVINCIAL FISCAL FELICIANO BELMONTE OF MOUNTAIN PROVINCE AS ACTING JUDGE OF THE MUNICIPAL COURT OF BAGUIO CITY.

In the interest of the public service and pursuant to the provisions of section 2562 of the Revised Administrative Code, Mr. Feliciano Belmonte, Provincial Fiscal of Mountain Province, is hereby de-

signated Acting Judge of the Municipal Court of Baguio City, effective December 4, 1954, and until the return of the regular incumbent who is on leave of absence.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 166

December 2, 1954

DESIGNATING MUNICIPAL JUDGE EDMUNDO PIÑGA OF ZAMBOANGA CITY AS ACTING MUNICIPAL JUDGE OF BASILAN CITY.

In the interest of the administration of justice and pursuant to the provisions of section 29 of Republic Act 288, otherwise known as the Charter of the City of Basilan, Mr. Edmundo Piñga, Municipal Judge of Zamboanga City, is hereby designated Acting Municipal Judge of Basilan City effective immediately and until the return to office of the regular incumbent.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE NO. 170

December 9, 1954

AUTHORIZING ACTING CASHIER AND DISBURSING OFFICER LORETO G. SANTELICES, LAND REGISTRATION COMMISSION TO DRAW WARRANTS UPON THE NATIONAL TREASURY, COVERING SALARIES AND WAGES OF OFFICIALS AND EMPLOYEES OF SAID COMMISSION.

Pursuant to the provisions of section 616 of the Revised Administrative Code, and upon recommendation of the Commissioner, Land Registration, Mr. Loreto G. Santelices, Acting Cashier and Disbursing Officer, Land Registration Commission, is hereby authorized to draw warrants upon the National Treasury, covering salaries and wages of officials and employees of said Commission, and, upon duly approved vouchers, other expenses properly chargeable against the appropriation for said Commission, signing as follows:

"For the Commissioner, Land Registration Commission:

(SGD.) LORETO G. SANTELICES
Acting Cashier and Disbursing Officer

This authority should take effect on December 16, 1954, and to continue only during the leave of absence of the regular incumbent, or until further orders.

JESUS G. BARRERA
Undersecretary of Justice

Department of Agriculture and Natural Resources

BUREAU OF PLANT INDUSTRY

PLANT INDUSTRY ADMINISTRATIVE ORDER NO. 15, REVISED, SERIES 1954

September 11, 1954

AN ORDER PROHIBITING THE CULTURE AND PROPAGATION OF THE RICE VARIETIES BUENKETAN STRAIN 91-A-3, MARAGAKET, DALONGDONG, KINANDANG PUTI, KHO LUANG BIN THONG OR CELERY STICK, BULUHAN, MAGSANAYA, SIPOT, ININTIW, MATUNGSAY, BANGPHRA, SERAUP KECHIL 36, PINURSIGUI, ELON-ELON, KIRING-KIRING, MESTIZA, THAILAND, KALIBO, MILAGROSA, BINAGONG TAO, MAGUINSALAY AND MACAN-BINO WHICH ARE SUSCEPTIBLE TO THE ATTACK OF A DEADLY RICE DISEASE, NECK-ROT, AND OTHER MINOR DISEASES IN CERTAIN PLACES WHERE CONDITIONS ARE FAVORABLE FOR ITS DEVELOPMENT; PROVIDING MEASURES FOR ITS CONTROL; AND PLACING UNDER QUARANTINE THE PLACES WHERE SAID DISEASE ALREADY EXISTS.

WHEREAS, the rice varieties Buenketan Strain 91-A-3, Maragaket, Dalongdong, Kinandang Puti, Kho Luang Thong or Celery Stick, Buluhan, Magsanaya, Sipot, Inintiw, Matungsay, Bangphra, Seraup Kechil 36, Pinursigui, Elon-elon, Kiring-kiring, Mestiza, Thailand, Kalibo, Milagrosa, Binagong tao, Maguinsalay and Macan-bino are definitely known to be affected by a serious disease commonly known as the neck-rot caused by the fungus, *Piricularia oryzæ, in certain parts of the Philippines*;

WHEREAS, this rice disease is not yet known to be wide-spread in the Philippines, its occurrence being localized; and

WHEREAS, adequate measures must be immediately adopted to check the spread and effect the control of this dangerous rice disease;

NOW, THEREFORE, under authority conferred upon me by section 1757 of Act No. 2711, known as the Revised Administrative Code, and under section 10 of Act No. 3027, entitled "An Act to Protect the Agricultural Industries of the Philippine Islands from Injurious Plant Pests and Diseases, etc.," Plant Industry Administrative Order No. 15, Series of 1949, declaring the neck-rot disease of rice caused by the fungus, *Piricularia oryzæ*, a contagious and dangerous disease or rice, is hereby revised and promulgated to govern the

removal or treatment of the affected rice plants and thus check the spread and effect the control of the disease:

SECTION 1. For the purpose of this Administrative Order the East Visayan Irrigation District, comprising among others, the municipalities of Palo, Dagami, Pastrana, Dulag and Tolosa, Leyte; the Provincial Nursery and its environs at Pantar, Lanao; the Sabani Estate in Laur, Talavera, Muñoz, Sto. Domingo, Nueva Ecija; Calapan, Mindoro; Calabanga, Nabua, Libmanan, Bula, Naga City, Cabusao, Buhi, Pili, Siruma, Ocampo, Sipocot, Iriga, Tigaon, Minalabac, Pamplona, Bato, Tinambac, Canaman, Camarines Sur; in Cabadbaran, Butuan City, Agusan; Mobo and Palanas, Masbate, Arayat, Pampanga, Abra, Davao and Rizal or any other place where the neck-rot disease of rice has been found and determined to exist, shall be considered as formally declared areas infected with the disease.

SEC. 2. The movement, transfer or carrying from provinces or municipalties or cities declared area or areas infected, of the rice Buenketan Strain 91–A–3, Maragaket, Dalongdong, Kinandang Puti, Kho Luang Bin Thong or Celery Stick, Buluhan, Magsanaya, Sipot, Inintiw, Matungsay, Bangphra, Seraup Kechil 36, Pinursigui, Elon-elon, Kiringkiring, Mestiza, Thailand, Kalibo, Milagrosa, Binagong tao, Maguinsalay and Macan-bino, etc., palay seeds, or of any other parts of the plant of said varieties capable of transmiting the disease to another province, municipality or city, is hereby prohibited except when the transfer is made by order of the Director of Plant Industry or by his duly authorized representatives for study or for other scientific purposes or by private persons for similar purpose but under permit previously issued by the said Bureau.

SEC. 3. Whenever the neck-rot disease of rice is found or determined to exist in any locality in the Philippines, aside from the provinces referred to in this Order, the Director of Plant Industry shall send a written notification to the Governor of the province concerned, either directly or through one of his authorized representatives, containing, among other things, the names of the municipalities or cities or barrios infected by the disease, and the names of the owners or tenants or persons in charge of the affected fields.

SEC. 4. Upon being notified in accordance with the preceding paragraph, the Provincial Governor shall immediately inform, in writing, each Municipal Mayor or City Mayor concerned of the contents of the notification of the Director of Plant Industry. The Municipal Mayor or City Mayor shall forthwith issue a general written notification to the inhabitants of the municipality or city concerned to the effect that the neck-rot disease exists in the municipality or city and at the same time declare the municipality or city as infected with this rice disease. Copies of the general notification in English and/or local dialects shall forthwith be posted in six conspicuous places in the municipality or city and a certified copy of same sent to the Diector of Plant Industry. Notice to this effect shall also be broadcasted in local dialects by means of public criers or "Bandillos".

SEC. 5. Once a municipality or city or portion thereof has been declared infected area with this plant disease, it shall be the duty of the person who owns or has under his charge rice fields within the infected areas:

(1) To destroy all affected plants and parts thereof including weed hosts, and, if necessary, the whole fields affected by the disease in accordance with the instructions given by the Director of Plant Industry, or any of his duly authorized representatives.

(2) To burn all infected stubbles and plant trashes, including the rice hay and palay hull after harvesting, threshing and milling, to remove all sources of infection and, if necessary, fallow the field or to plant crops other than rice or cereal not attacked by said disease.

(3) To cooperate with and help the Plant Inspectors and other officials of the Bureau of Plant Industry in their work of controlling the disease and to comply with all the instructions, orders or requirements relative to the destruction or control of the disease.

(4) To disinfect the seeds before planting according to instructions of the Director of the Bureau of Plant Industry or his duly authorized representatives.

SEC. 6. To prevent the spread of neck-rot disease of rice, the planting of rice varieties Buenketan Strain 91–A–3, Maragaket, Dalongdong, Kinandang Puti, Kho Luang Bin Thong or Celery Stick, Buluhan, Magsanaya, Sipot, Inintiw, Matungsay, Bangphra, Seraup Kechil 36, Pinursigui, Elonclon, Kiring-kiring, Mestiza, Thailand, Kalibo, Milagrosa, Binagong tao, Maguinsalay and Macanbino, etc. which are definitely known to be attacked by this disease especially in regions or places where high humidity or prevalence of intermittent periods of wetness may prevail, shall be prohibited.

SEC. 7. In order to carry out the provisions of this Administrative Order, the Secretary of Agriculture and Natural Resources and the Director of Plant Industry, or their duly authorized representatives, the Provincial Governor of the province, the Mayor of the municipality or city where such plant disease are known to exist shall at all times have access to, and may enter into, any rice plantation where the neck-rot disease of rice is known or suspected to exist.

SEC. 8. Nothing in this Order shall be construed or interpreted as prohibiting the Secretary of Agriculture and Natural Resources, the Director of Plant Industry or their duly authorized representatives from permitting the destruction, taking

away or removing in exceptional cases, in such manner or by such conditions as may be prescribed by them, such infected rice plants from any or all the provinces mentioned above, or from those which may thereafter be declared as infected areas.

SEC. 9. Whenever a municipality or city or province has been officially declared infected with this rice disease in accordance with paragraphs 1 and 3 of this Order, and in order to promptly effect the control and prevent the spread of this plant disease, the Chief of Constabulary, the Provincial and Municipal or City officials concerned are hereby requested to assist and cooperate, pursuant to section 12 of Act No. 3027, with the Director of Plant Industry or his duly authorized representative in the strict enforcement of all Administrative Orders or instructions of the Director of Plant Industry relative to the control of this malady.

SEC. 10. Failure of the owner or caretaker of the infected land to completely destroy all affected plants or to comply with the instructions relative to the control of the disease within a period of fourteen days from the date of receipt of written notification, shall be considered *prima facie* evidence of an endeavor to evade the duty imposed by virtue of this Order and shall render the planter or person in charge of the rice plantations, liable to the full penalties of the law as herein provided.

SEC. 11. Any person who contravenes or violates any of the provisions of this Administrative Order or who obstructs or impedes or assists in obstructing or impeding the Secretary of Agriculture and Natural Resources, the Director of Plant Industry, or their duly authorized representatives, the Provincial Governor or his duly authorized representatives or the Municipal or City Mayor or his duly authorized representatives in the execution of any of the provisions of this Order shall be liable to prosecution and upon conviction shall suffer the penalty provided in section 13 of Act No. 3027, which is a fine of not exceeding ₱1,000 or imprisonment not exceeding six months, or both, in the discretion of the court.

SEC. 12. The provisions of this Administrative Order shall take effect upon approval of the Honorable, the Secretary of Agriculture and Natural Resources.

SEC. 13. *Repealing Provisions.*—All previous orders, rules and regulations or parts thereof which are inconsistent with the provisions of this Order, are hereby repealed.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources

Approved: October 11, 1954.

Recommended by:

EUGENIO E. CRUZ
Acting Director of Plant Industry

ADMINISTRATIVE ORDER NO. 7, SERIES 1954 (REVISED)

November 16, 1954

REGULATIONS GOVERNING THE IMPORTATION, BRINGING OR INTRODUCTION INTO THE PHILIPPINES OF LIVING ANIMALS SUCH AS INSECTS, BIRDS, CRUSTACEANS, BATS, MOLLUSKS, REPTILES, MAMMALS, AND OTHER ANIMALS NOT FALLING WITHIN THE SCOPE OF THE TERM "DOMESTIC ANIMALS" AS PROVIDED AND DEFINED IN SECTION 4 OF ACT NO. 3639, IN ORDER TO PROTECT THE AGRICULTURAL INDUSTRIES OF THIS COUNTRY.

Pursuant to the provisions of section 2 of Act No. 3767, known as the "Agricultural Pests Quarantine Act", Plant Industry Administrative Order No. 7, Series 1946, is hereby revised and the following rules and regulations are hereby promulgated to govern and regulate the importation, bringing, or introduction into the Philippines from foreign countries, of living animals, such as insects, birds, crustaceans, bats, mollusks, reptiles, mammals and other animals not falling within the scope of the term "Domestic animals" as provided and defined in section 4 of Act No. 3639, in order to protect the agricultural industries in this country.

1. For the purpose of this Administrative Order the following terms herein used are defined as follows:

(*b*) "Officer" shall mean singular or plural, as animals of the kinds enumerated in paragraph 2 of this Order and not falling within the scope of the term "Domestic animals" as provided and defined in section 4 of Act No. 3639.

(*b*) "Officer" shall mean singular or plural, as the case may demand, and shall include private person or persons, firms, corporations, companies, societies, associations and other legal entities and their agents or employees.

(*c*) "Authorized agents of the Director of Plant Industry" shall mean any plant quarantine officer or persons designated by the Director of Plant Industry to act as his representatives and who have written appointments issued by the Director of Plant Industry.

2. The importation, bringing, or introduction into the Philippines, for curiosities or pets, for controlling agricultural pests, or for any other purpose, of any living insects in any stage, or any birds, bats, reptiles, crustaceans, mollusks, mammals, or other animals not falling within the scope of the term "Domestic animals" provided and defined in section 4 of Act No. 3639, is hereby prohibited, except upon a written permit from the Director of Plant Industry. Such animals may be imported, until further orders, through the Port of Manila only where they will be subject to a rigid inspection and to such other treatments as may be neces-

sary, at the expense of the importer, to preclude the introduction of any organisms which might jeopardize the agricultural industry in this country.

3. Any person contemplating the importation, bringing or introduction into the Philippines of any of the living animals enumerated in the next preceding paragraph hereof, shall first make a written application to the Director of Plant Industry on a form provided for the purpose ((Bureau of Plant Industry Form No. 19), giving all the data required in said form, and such application must be made at least one month in advance of the shipment of the living animals desired to be imported.

4. On approval of the Director of Plant Industry of an application for the importation of animals, a permit (Bureau of Plant Industry Form No. 20), shall be issued in triplicate; the original copy shall be furnished to the applicant for presentation to the Plant Quarantine Officer in the Port of Manila; the duplicate copy shall be furnished the Insular Collector of Customs; and the triplicate copy shall be filed with the Application at the Central Office of the Bureau of Plant Industry.

5. Immediately upon the arrival of the animals in the Port of Manila, the importer or the person bringing in the animals shall make, in triplicate, a declaration to the Insular Collector of Customs on a form provided for the purpose (Bureau of Plant Industry Form No. 21), giving all the data required in said form. The original copy shall be filed with the Insular Collector of Customs, the duplicate copy shall be furnished the Director of Plant Industry and the triplicate copy shall be filed with the Plant Quarantine Officer in the Port of Manila. In the absence of a permit as provided in paragraph 4 hereof, the Director of Plant Industry, through his authorized agents, shall have the importation held for the purpose of determining whether or not same may be allowed entry. If it is believed that the importation might be detrimental to the best interests of the country, same shall be ordered returned to the country of origin or destroyed at the option of the importer, who shall bear all the expenses incurred thereby.

6. All animals imported under this Administrative Order must be free from injurious pests and diseases, and shall not be accompanied by any obnoxious weeds, or seeds or plant materials which would likely become pests or weeds, or which would likely harbor destructive plant pests and diseases. Any such obnoxious weeds, seeds, or plant materials shall be destroyed. If, after inspection the Director of Plant Industry or his duly authorized agent believes that quarantine is necessary, said animal shall be quarantined and after the necessary period of quarantine and observation, the said Director or his duly authorized agent opines that the disease or pest that may be present in or on said animals appears incurable or unremovable and that the introduction of said diseases or pests may prove detrimental to the best interests of the country, the animals concerned shall be ordered returned to the country of origin or destroyed, at the option of the importer, who shall bear all expenses incurred thereby. Cats, rabbits, and other animals intended for curiosities or pets or for controlling agricultural pests, for experimental purposes, or for any other purpose, which might also be carriers of communicable animal diseases, shall also be subject to inspection and certification by the Director of Animal Industry or his duly authorized agent.

7. Living animals falling under the provisions of said Act No. 3767, which may hereafter be made the subject of restrictive orders, may be imported in limited numbers under permit from the Director of Plant Industry if said animals are to be used for experimental purposes only, subject to such conditions as the said Director may impose and provided that said importation shall only be made through the Port of Manila.

8. Fees:

a. For every permit issued, a fee of ₱5 shall be charged.

b. Inspection fees.—For a shipment of one to ten birds a fee of ₱2 shall be charged. For any additional head thereof, a fee of ₱0.10 shall be charged.

c. For animals liable to become pests a cash bond of ₱5 each shall be charged.

9. It shall be unlawful for any person, firm, corporation or association or their agents or employees in any manner or by any means to remove or carry any imported animal or animals from the place of landing until such animal or animals shall have duly inspected and passed by the Director of Plant Industry or his duly authorized agents.

10. Any person, firm, corporation or association that shall violate any of the provisions of this Administrative Order, or who shall forge, counterfeit, alter, deface, or destroy any certificate or any paper issued by virtue of this Administrative Order, shall be liable to prosecution and upon conviction shall suffer the penalty provided in section 9 of Act No. 3767, which is a fine on the basis of the declared, manifested or assessed value of the imported animal or by imprisonment not exceeding 6 months, or by both, in the discretion of the court.

11. *Repealing Provisions.*—All orders, rules and regulations or parts thereof which are inconsistent with the provisions of this Administrative Order, are hereby revoked.

12. This Administrative Order shall take effect upon the date of approval.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources

Approved: November 26, 1954.

Recommended by:

EUGENIO E. CRUZ
Acting Director of Plant Industry

BUREAU OF LANDS

LANDS ADMINISTRATIVE ORDER No. 17

October 11, 1954

COLLECTION OF PROPORTIONATE SURVEY COST OF LOTS IN PUBLIC LAND SUBDIVISIONS UNDERTAKEN UNDER COMMONWEALTH ACT NO. 3673, AS AMENDED BY COMMONWEALTH ACT NO. 630 AND REPUBLIC ACT NO. 310 AS AN ENCUMBRANCE TO LAND PATENTS.

SECTION 1. For the purpose of carrying out the provisions of Act No. 3673, as amended by Commonwealth Act No. 630 and Republic Act No. 310, the following condition shall also be incorporated in the patents issued for the tracts of land covered by public land applications for agricultural purposes, aside from those already provided by law, to wit:

> "and subject further to the condition that the patentee shall pay the proportionate cost of the survey of the land covered by this patent."

SEC. 2. This Order shall take effect upon its approval.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources

Recommended by:

ZOILO CASTRILLO
Director of Lands

LANDS ADMINISTRATIVE ORDER No. 19

November 4, 1954

RULES AND REGULATIONS GOVERNING THE PRIVATE SALE OF LANDS OF THE PUBLIC DOMAIN UNDER REPUBLIC ACT NO. 730.

Pursuant to the provisions of section 79 (B) of the Revised Administrative Code, Republic Act No. 730 and section 5 of Commonwealth Act No. 141, as amended, the following rules and regulations governing the private sale of lands of the public domain for residential purposes are hereby promulgated for the information and guidance of all concerned.

1. *Scope of the regulations.*—These rules and regulations shall apply to applications to purchase, at a private sale, public land for residential purposes under Republic Act No. 730, approved on June 18, 1952.

2. *Townsite lots not disposable under these regulations.*—Until otherwise specifically provided by law that may hereinafter be enacted these rules and regulations shall not apply to the disposition of lots within townsites established under Chapter XI of the Public Land Act.

3. *Land that may be acquired.*—Lands of the public domain of the Republic of the Philippines which are non-timber or non-mineral suitable for residential purposes and are not needed for the public service may be acquired through private sale.

4. *Extent of land that may be purchased.*—A person duly certified under these regulations shall be entitled to purchase only one home lot, the area of which shall not exceed one thousand square meters. The land applied for under these rules may, in proper cases, be reduced so as to satisfy only the actual needs of the applicant and accommodate a greater number of persons in need of home lots, especially in thickly populated committee.

5. *Applicant must agree to result of subdivision.*—A person seeking the benefit of a private sale under the provisions of Republic Act No. 730 affecting lands within a duly established city or political subdivision or residential site must agree to the result of subdivision requirements prescribed by the Bureau of Lands and/or by the National Planning Commission or similar bodies.

6. *Persons entitled to a private sale.*—Persons who have the following qualifications may purchase public lands for residential purposes through private or direct sale:

> (*a*) Citizens of the Philippines; and also citizens of the United States during the enforcement of the Parity Amendment to the Philippine Constitution;
>
> (*b*) Must be at least 21 years of age;
>
> (*c*) Do not own a home lot in the city or municipality where the land is located; and
>
> (*d*) Must have actually occupied in good faith the land applied for and constructed their houses thereon and actually resided therein.

7. *Rules governing the issuance of a permit.*—The rules and regulations governing the issuance of a permit as prescribed by Lands Administrative Order No. 8–3 shall be followed and observed in so far as they are not inconsistent with those herein provided, and the provisions of Republic Act No. 730.

8. *Appraisal.*—Lands sold under Republic Act No. 720 shall be appraised in accordance with section 116 of Commonwealth Act No. 141, as amended, and the rules and regulations promulgated thereunder.

9. *Form of application.*—An application for the benefits conferred by Republic Act No. 730 must be in the form prescribed by the Bureau of Lands for purchase of public lands fitted for residential purposes and must be accompanied with an affidavit setting forth the facts that form the bases of his claim for the right to a private sale.

10. *Procedure.*—The procedure prescribed by Commonwealth Act No. 141, as amended, and by the existing rules and regulations of the Bureau of Lands in the disposition of lands fitted for residential purposes shall be observed in so fas as they do not infringe the right of the applicant to a private sale.

11. *Notice.*—Before the sales contract or an order of the award is issued to an applicant, a notice of the private sale shall be posted for a period of thirty days in a conspicuous place in the land itself, on the bulletin board of the barrio, at the door of the municipal building of the municipality where the land is located, by the applicant, and at the bulletin board of the provincial or district land office of the province where the land is located, by the Provincial or District Land Officer as the case may be. At the end of the said period of posting, the official concerned shall make a certification to that effect to the Director of Lands, and the applicant shall return a copy of the notice which he had posted in connection therewith, to the Director of Lands, duly sworn to by him showing that the said notice has been duly posted as prescribed for herein.

12. *Payment of purchase price.*—A down payment of 10 per centum of the appraised value of the lot, as approved by the Secretary of Agriculture and Natural Resources, shall be collected before the award may be made in favor of the purchaser. The balance of the purchase price may be paid in full at the making of the award or in not more than 10 equal annual installments from the date of the award. All over due installments will bear interest of 4 per cent per annum.

13. *Repeal or prior rules and regulations.*—All existing rules and regulations, directive, resolutions, circulars, etc., affecting the sale of public lands which are contemplated under Republic Act No. 730 and inconsistent with this Lands Administrative Order, are hereby repealed.

14. *Effectivity.*—These rules and regulations shall take effect upon approval.

Approved, November 4, 1954.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources

Recommended by:

ZOILO CASTRILLO
Director of Lands

BUREAU OF FISHERIES

FISHERIES ADMINISTRATIVE ORDER NO. 2-17

November 26, 1954

AMENDING SECTION 21 "(*a*)" AND "(*b*)" OF FISHERIES ADMINISTRATIVE ORDER NO. 2-9.

1. Section 21 "(*a*)" and "(*b*)" of Fisheries Administrative Order No. 2-9, are hereby amended to read as follows:

"21 '(*a*)', ₱30 plus ₱1 for every ton or fraction thereof for sailing or rowed vessel more than three tons and ₱50 plus ₱1 for every ton or fraction thereof for powered "basnig" fishing outfit (banca type), "bagnet", "sapiao", "cub-cub" (talacop) or similar fishing method operated in connection with powered vessel.

'(*b*)' ₱100 plus ₱1 for every ton or fraction thereof for powered vessel used in trawl, towing (basnig), launch type, "muro-ami" and similar deep-sea or off-shore fishing method, provided however, that the total fees shall not be more than ₱200."

2. This Administrative Order shall take effect immediately upon its approval.

Approved December 3, 1954.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources

Recommended by:

D. V. VILLADOLID
Director of Fisheries

Department of Public Works and Communications

DEPARTMENT ORDER NO. 34
Series of 1954

August 28, 1954

AMENDING THE PENULTIMATE PARAGRAPH OF DEPARTMENT OF PUBLIC WORKS AND COMMUNICATIONS ORDER NUMBERED 23 DATED AUGUST 12, 1954, CREATING A RADIO OPERATOR EXAMINATION COMMITTEE.

SECTION 1. The penultimate paragraph of Department of Public Works and Communications Order No. 23 dated August 12, 1954, is hereby amended to read as follows:

"It shall be the duty of the Committee to prepare examination questions and conduct regular examinations for commercial and amateur operator licenses of all classes at the places and on such dates indicated below—

Manila	August 28, 1954
Iloilo City	October 9, 1954
Cebu City	November 6, 1954
Davao	December 4, 1954
Manila	December 18, 1954
Manila	April 23, 1954

"The Committee is also hereby authorized to give special examinations in Manila for first class commercial radiotelegraph operator licenses (code only), removal of code deficiencies, third class commercial radiotelephone (limited) operator licenses, restricted land mobile radiotelephone and ship low

power radiotelephone operator permits and amateur operator licenses on Saturdays.

"The results of all regular examinations must be released by the Committee within three months from the date of such examinations. The results of special examinations must be released by the Committee within one week after they are given.

"Notices of results should be prepared for the signature and approval of the Chief of the Radio Control Division in accordance with usual praetice."

SEC. 2. This Department Order shall take effect immediately.

VICENTE OROSA
Acting Secretary

DEPARTMENT ORDER No. 36
Series of 1954

December 7, 1954

SIGNING OF CORRESPONDENCE PREPARED IN THE RADIO CONTROL DIVISION, RADIO CONTROL BOARD.

In view of the illness of the Acting Undersecretary and Acting Chairman, Radio Control Board, during his absence, Mr. Guillermo Canon, Chief, Radio Control Division and Secretary, Radio Control Board is hereby authorized to approve and sign the following correspondence in addition to those heretofore signed and approved by him:

(1) Partial salary vouchers, payrolls, and applications for leave of absence (except commutation) submitted by employees of the Radio Control Division, Radio Control Board.

(2) Radio Station Construction Permits, Radio Station and Operator Licenses, Permits to Possess, Own, Purchase, Sell, Transfer and Manufacture radio transmitters and transceivers, as well as other routinary correspondence, after these papers have been checked by the representative of the Department.

Mr. Canon shall approve and sign the abovementioned correspondence as follows:

JUAN G. PARAISO
Acting Undersecretary and
Acting Chairman, Radio Control Board

By:

GUILLERMO CANON
Chief, Radio Control Division and
Secretary, Radio Control Board

Correspondence involving high policy should be prepared for the signature of the undersigned as heretofore.

This order shall take effect immediately and shall be automatically revoked upon return to duty of the Acting Undersecretary and Acting Chairman, Radio Control Board.

VICENTE OROSA
Acting Secretary

BUREAU OF POSTS

PRESS BULLETIN

December 16, 1954

The Director of Posts instructed all postal employees to refrain from soliciting Christmas gifts from patrons.

The public is also warned that impostors were reported going around posing as postal men and asking for Christmas gifts. Those who are being molested by these unscrupulous individuals preying on a grateful public will do well not to pay any attention to such impostors.

F. CUADERNO
Acting Director of Posts

BUREAU OF TELECOMMUNICATIONS

CIRCULAR
(Unnumbered)

November 22, 1954

1954 NATIONAL FUND CAMPAIGN OF THE LIBERTY WELLS ASSOCIATION

The following letter dated November 18, 1954 has been received from our Department Secretary:

> "By proclamation of the President of the Philippines and in accordance with his economic development program particularly in the rural areas, the period from November 5 to December 18, 1954 has been set as the National Fund Campaign of the Liberty Wells Association.

Officials and employees of this bureau are urged to give their whole-hearted cooperation and support to the campaign, in order that we may be able to do our share in this patriotic movement towards the alleviation of our rural folks.

In each telegraph or radio station, the Chief Operator or Operator-in-Charge is hereby designated to take charge of collecting the contributions of the employees therein and of remitting the amount by *money order payable to the Liberty Wells Association* or other means to the Acting Chief, Administrative Division, Bureau of Telecommunications, Manila. The remittances should be accompanied by a list showing the amount contributed by each employee. Official receipts of the Liberty Wells Association will be sent later.

In the Central Office, each Chief of Division shall supervise the collections in his division with a view to raising as big an amount as possible. The collections should be turned over to the Acting Chief,

Administrative Division not later than January 22, 1955.

J. S. ALFONSO
Acting Director of Telecommunications

CIRCULAR
(Unnumbered)

LOSS OF TREASURY WARRANT NUMBER 1519312

December 6, 1954

The loss of the following treasury warrant has been reported by the Accounting Officer for the Bureau of Telecommunications:

Treasury Warrant No. 1519312 for P18 dated November 19, 1951 in favor of Operator-in-Charge, Talavera, Nueva Ecija.

Chief Operators, Operators-in-Charge and others concerned shall take note of the lost treasury warrant and see to it that it will not be accepted in their transactions under any circumstances. Any government official or employee who finds it in the possession of any person is requested to notify this Office immediately.

J. S. ALFONSO
Acting Director of Telecommunications

OFFICE ORDER No. 31

December 8, 1954

MESSRS. GONZALO M. KAMANTIGUE AND RUFINO TOLENTINO, NEW ASSIGNMENTS OF—

In accordance with the new reorganization plan for the Bureau of Telecommunications which has been approved by the Department, Mr. Gonzalo M. Kamantigue has been designated Acting Chief Telecommunications Engineer and as such he shall perform the following duties:

1. To act as Chief Technical Adviser of the Director and to assist the Director in the technical management of the Bureau.

2. To attend, pass upon and make appropriate recommendations on all technical matters submitted to the Director by the different division chiefs of the Bureau.

3. To approve and sign for the Director, requisitions for telecommunications equipment and materials not exceeding P1,000 in value.

4. To sign treasury warrants over P500 but not exceeding P1,000 each in payment of telecommunication equipment and materials.

5. To perform such other duties as the Director or the Department may assign from time to time.

6. In addition to the duties listed above, and until present arrangement is changed, he shall continue to check all radio station licenses and permits, and all radio operator licenses, as well as other correspondence prepared by the Radio Control Division relative to the enforcement of the radio laws and regulations, and implementation of the Radio Broadcasting Law before these are forwarded for signature of the Secretary and Undersecretary of Public Works and Communications. He shall also, when required, render such advice as may be needed by the Department relative to the International Telecommunication Convention and local radio laws and regulations.

Mr. Rufino Tolentino, as Chief Administrative and Legal Officer of the Bureau of Telecommunications, shall perform the following duties:

1. To check appointments or separation papers prepared for officials and employees.

2. To review correspondences prepared by the different divisions addressed to the Department pertaining to administrative cases against employees.

3. To approve applications for leave filed by employees (except Chiefs of Division) for over 30 days but not more than 60 days.

4. To go over memoranda prepared for the Director concerning administrative cases and the penalty recommended to be taken.

5. To sign for the Director designations of employees as Acting Operators-in-Charge during the absence of the regular incumbents.

6. To sign for the Director letters of reprimand and warning or admonition to employees for irregularities committed by them.

7. To sign treasury warrants over P500 but not exceeding P1,000 each covering payment of salary or money value of leave of employees, traveling expenses and in payment of articles other than telecommunication equipment and materials.

8. To prepare the Annual Report of the Bureau.

9. As Acting Budget Officer, to prepare the annual budget estimates of income and expenditures of the bureau, and attend to release of funds and other matters pertaining to budgeting and appropriation.

10. To perform such other duties as the Director or the Department may assign from time to time.

J. S. ALFONSO
Acting Director of Telecommunications

CIRCULAR
(Unnumbered)

December 10, 1954

LOSS OF TREASURY WARRANTS NUMBERS 3597990 AND 2238766

The loss of the following treasury warrants has been reported by the Accounting Officer for the Bureau of Telecommunications:

Treasury Warrant No. 3597990 for P18.60 dated May 11, 1954 in favor of Jesus A. Amores

Treasury Warrant No. 2238766 for ₱220.87 dated December 14, 1952 in favor of Juan Monreal

Chief Operators, Operators-in-Charge and others concerned shall take note of the lost treasury warrants and see to it that they will not be accepted in their transactions under any circumstances. Any government official or employee who finds them in the possession of any person is requested to notify this Office immediately.

J. S. ALFONSO
Acting Director of Telecommunications

CIRCULAR
(Unnumbered)

December 13, 1954

1954 NATIONAL FUND CAMPAIGN OF THE LIBERTY WELLS ASSOCIATION

The following circular letter dated December 2, 1954 of the Executive Secretary, who is also Chairman, Labor and Employees Division, Liberty Wells Fund Campaign, has been furnished us by our Department for compliance:

"*To all Heads of Offices, Bureaus and Corporations under the National Government:*

"SUBJECT: National Campaign of the Liberty Wells Association

"In conjunction with circulars issued by the Office of the President and relative to Proclamation No. 88 designating the period November 5 to December 18, 1954 as the National Fund Campaign of the Liberty Wells Association, and in accordance with an agreement reached in a meeting of representatives of Offices, Bureaus and Corporations under the National Government, it was decided to recommend that a voluntary contribution of 1 per cent of one month's salary be considered appropriate for each employee for the Liberty Wells fund campaign. This amount could be paid in installments but not later than February 28, 1955.

"Considering that one of the vital and urgent problems in this country is to give potable water to over 80 per cent of our people who do not enjoy up to the present moment this essential service, and in accordance with the commitment made by the President of the Philippines to give top priority to projects that will improve living conditions in the rural areas, we are sure, that every patriotic Filipino will rally to the call of this worthy undertaking.

"I would, therefore, in behalf of 16,900,000 direct beneficiaries of this campaign, enjoin each and every employee in the National Government to extend every cooperation and assistance possible towards the successful conclusion of this fund drive.

"This supersedes circular letter of November 24, 1954."

Officials and employees of this bureau are urged to give their whole-hearted cooperation and support to the campaign in order that we may be able to do our share in this patriotic movement towards the alleviation of our rural folks.

In each telegraph or radio station, the Chief Operator or Operator-in-Charge is hereby designated to take charge of collecting the contributions of the employees therein and of remitting the amount by *money order payable to the Liberty Wells Association* or other means to the Acting Chief, Administrative Division, Bureau of Telecommunications, Manila. The remittances should be accompanied by a list showing the amount contributed by each employee. Official receipts of the Liberty Wells Association will be sent later.

In the Central Office, each Chief of Division shall supervise the collections in his division with a view to raising as big an amount as possible. The collections should be turned over to the Acting Chief, Administrative Division not later than February 28, 1955.

This supersedes our Unnumbered Circular of November 22, 1954.

J. S. ALFONSO
Acting Director of Telecommunications

Board of Review for Moving Pictures

II. REVISED RULES AND REGULATIONS OF THE BOARD OF REVIEW FOR MOVING PICTURES.

A. *Jurisdiction*

1. The Board of Review for Moving Pictures is the sale agency of the Government authorized to examine and supervise examination of all films, talking or silent, shown in the Philippines.

2. The Board has jurisdiction over pictures shown in public theaters as well as those shown in private houses throughout the Philippines.

3. Peep pictures (those that move) fall within the jurisdiction of the Board.

B. *Applications for Preview*

1. All applications for censorship of pictures, indicating (1) name of applicant; (2) title of film; (3) name of producer and country of origin; (4) whether silent, sound or talking; (5) place of examination; (6) scheduled date of public exhibition; (7) length of film in feet; (8) number of reels or parts; (9) the number of pictures of the applicant previously previewed and approved by the Board which have not, as of the date of filing such appli-

cation, been exhibited in local theaters, shall be accomplished in triplicate, accompanied by a tax clearance from the Bureau of Internal Revenue indicating that the corresponding taxes have already been paid, and sent directly to the Board of Review for Moving Pictures, Executive Office, Manila. The application for the review of a picture must reach the Office of the Board at least one week before the picture is to be examined. If the application is received at the Office of the Board less than seven days before the scheduled date of the exhibition of the picture, the Board can give no assurance that the picture will be previewed in time for its scheduled exhibition.

2. After the application for the preview of a picture is received, the Secretary and Executive Officer of the Board shall designate the date for the preview of that picture, which shall be in accordance with the date of receipt of application, observing the "first come, first served" principle, and shall inform the owner or the exhibitor concerned. Under special circumstances, however, the Chairman may authorize exceptions to the foregoing rule.

3. No application for the preview of a picture shall be sent to the Office of the Board unless that picture is available and ready for examination in all respects.

C. *Manner of Approving a Picture*

1. The Chairman shall form six regular committees of three, each committee to be available every day of the week, except Sundays, to preview pictures in accordance with schedules prepared by the Secretary and Executive Officer under rule B–2: *Provided, however,* that members may make such adjustments as they may find necessary and form special committees of three among themselves to examine pictures regularly or specially scheduled for preview.

Each committee may elect a chairman if it so desires. After the required number of votes approving the picture is taken, the chairman may sign the permit in behalf of the Committee. If a committee is without a chairman, all or at least two of the members thereof shall sign the permit.

2. Every picture submitted for review shall be passed upon by one of these committees. The previewing members shall submit their comments on pictures which they recommend for deletion or for banning from public exhibition. The affirmative vote of two members shall pass the picture. If only two members of the committee are present, a unanimous vote shall be required to pass the picture. The committee previewing the picture shall inform the representative of the exhibitor present in the preview of the action contemplated on the picture.

3. If for any reason, the committee of three shall fail to pass the picture under preview, by reason of lack of the required majority vote, the picture shall be endorsed to the Board *en banc*. If only two members present fail to agree, the picture shall be resubmitted to a preview of another committee of three, not to the Board *en banc*. The owner of the picture, through his representative in the preview room, may elect *not to go ahead* with the preview if only two members are present. If there is no representative of the exhibitor, the two members present shall proceed with the preview.

4. Majority of the qualified members of the Board shall constitute a quorum for a preview *en banc*. Members attending preview *en banc* shall write out their votes on the picture under consideration in a form to be provided for the purpose in which they shall indicate their approval, approval with deletions to be described in detail, or disapproval giving the reasons therefor.

5. No affirmative vote of the majority in a preview *en banc* shall be appealed by any of the members of the Board who may be absent in the preview or during the voting on the picture.

6. The Secretary and Executive Officer of the Board shall notify in writing the producer, producer's representative, importer, or the party applying for permit, of the decision of the Board banning a picture from public exhibition or shelving it temporarily. Within sixty days from the receipt of such notice, an appeal may be made to the President of the Philippines by the producer, producer's representative, importer, or party applying for permit.

7. Scenes or portions of films recommended for elimination shall be surrendered to the Board for proper disposition, before a permit may be issued.

8. Where the picture previewed and approved by the Board is a 3-D picture, the permit therefor shall contain the following condition: "This permit is valid also for flat versions provided it conforms in all respects with the 3-D version approved by the Board."

9. Trailers of pictures previewed and approved by the Board for public exhibition shall not contain any of the portions ordered deleted by the Board. If for any reason the trailer of a picture must be shown to the public before a preview by the Board of the picture itself, such trailer should be submitted to the Board for approval.

10. Documentary, newsreel, educational, or commercial advertising films are subject to examination by the Board. All short documentary, newsreel, and short educational, or commercial advertising films may be previewed by only one member. Full-length pictures shall, as any other picture, be subject to a committee preview.

11. Unless otherwise specifically authorized by the Chairman, the producer, producer's representative, exhibitor, or applicant for permit, may send only one representative to the preview room.

D. *Exhibition of Motion Picture not approved by the Board*

The exhibition of any motion picture which has not been previously approved by the Board or by any one of the committees of the Board, and which does not have the necessary Permit Certificate (BRMP Form 2), duly signed by the Secretary and Executive Officer of the Board and bearing the official seal of the said Board, for its exhibition in second-run or provincial theaters, is contrary to law and shall be stopped by the proper authorities. Furthermore, the owner and/or producer of the film, as well as the exhibitor of the picture shall be liable to the penalties provided by law. The Secretary and Executive Officer shall require that a thirty-centavo documentary stamp be affixed on each certification as to grant of Permit Certificate issued by him.

E. *Notice to the General Public of the Approval of Pictures shown in Theaters*

1. All theater operators shall, at the start of every program, flash a slide with the legend: ALL PICTURES SHOWN IN THIS THEATER HAVE BEEN PASSED BY THE PHILIPPINE BOARD OF REVIEW FOR MOVING PICTURES.

2. Theater owners and/or managers shall see to it that all motion pictures exhibited at their theaters have been duly passed by the Board of Review for Moving Pictures and are provided with the necessary Permit Certificates, or Certification as to Grant of Permit Certificates, as the case may be.

3. The Permit Certificate or Certification as to Grant of Permit Certificates for the picture currently being exhibited at any particular theater shall be accessible to the proper authorities for inspection.

F. *Movie Advertising*

1. Every theater owner or exhibitor shall refrain from using or displaying posters, still pictures and bill-boards which violate good taste and decency.

2. Every theater owner or exhibitor shall refrain from either incidentally or deliberately misleading the public with posters or advertisement of any kind showing scenes which have deleted from, or sequences no longer included in, any picture as approved by the Board, which is currently being exhibited, or which is about to be exhibited at his theater.

H. *Grounds for Withdrawing Permit Certificates*

1. A permit certificate granted by one of the committee of the Board for the public exhibition of a motion picture may be suspended or withdrawn by the Chairman upon recommendation of a majority of the members of the Board on the ground that the picture contains features which are objectionable.

2. A permit may also be cancelled if the theater owner and/or operator or exhibitor to which it was issued violates any of the rules and regulations of the Board of Review for Moving Pictures as set forth herein.

Approved, August 7, 1954.

TEODORO F. VALENCIA
Board of Review for Moving Pictures

* * *

OFFICE OF THE PRESIDENT OF THE PHILIPPINES
6th Indorsement
Manila, November 23, 1954

Respectfully returned to the Chairman, Board of Review for Moving Pictures, Manila, hereby approving, pursuant to the provisions of section 2(*b*) of Act No. 3582, as amended by Commonwealth Acts Nos. 167 and 305, the attached "Rules and Regulations of the Board of Review for Moving Pictures," as revised.

By authority of the President:

FRED RUIZ CASTRO
Executive Secretary

Gold Subsidy Board

GOLD SUBSIDY CIRCULAR NO. 1

November 5, 1954

RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT NO. 1164, OTHERWISE KNOWN AS THE GOLD SUBSIDY LAW.

Pursuant to section 13 of Republic Act No. 1164 entitled, "An Act to provide for emergency assistance to the Gold Mining Industry of the Philippines, to authorize the appropriation of funds therefor, and for other purposes", the following rules and regulations are hereby promulgated to implement the provisions of the said Act and for the guidance of all concerned:

1. *Gold Subsidy Board.*—The Board mentioned in Republic Act No. 1164 shall be known and called as the Gold Subsidy Board.

2. *Classification of Mines.*—The classification of mines as marginal, above marginal, or sub-marginal shall be determined by the Board upon recommendation of the Technical Committee created by it, based upon records of the previous six months of operations, which classification shall continue until a new classification is made.

3. *Total Remaining Capital Investment.*—For purposes of classification, the following is the general standard procedure in determining total remaining capital investment. The total remaining capital investment shall be the difference between the total capital investment and the sum of the depletion, amortization and depreciation reserves as determined by the Technical Committee.

4. *Gross Receipt.*—Determination of the term "gross receipt": If the gold production for a particular semester is not all sold, the "gross receipt" of the mine for that semester shall mean the actual market value of the bullion sold plus the estimated value of the unsold portion at the average current market price of gold prevailing during that semester but not to exceed the subsidy price mentioned in this Act.

5. *Depletion and/or Amortization.*—The formula for depletion reads as follows:

The depletion charge for a semester shall be obtained by dividing, the sum of:

(*a*) The total remaining mine property investment at the beginning of the period and

(*b*) Capital development expenditures during the period by the sum of the

(*c*) Actual tonnage milled during the same period and

(*d*) The ore reserve at the end of the period Multiplied all over by

(*e*) The actual tonnage milled during the period

Example:

$$\frac{[(a) \div (b)] \times (e)}{[(c) \div (d)]}$$

Mine property, Mine Development and Rehabilitation as of January 1, 1955	₱3,260,420.50
LESS:	
Accumulated Depletion Reserve Fund as of January 1, 1955	1,320,640.20
(*a*) Depleted total remaining property investment	₱1,939,780.30
PLUS:	
(*b*) Capital Development for period from January 1, 1955 to June 3, 1955	150,490.10
Remaining Property investment still undepleted	₱2,090,270.40
(*c*) Tonnage milled during the period January 1 to June 30, 1955	420,000 tons
(*d*) Ore Reserves as of June 30, 1955 including broken ore in stoped	2,220,632
Total tonnage against which unremaining property investment must be charged	2,640,632

Calculation for Depletion Charges:

$$\frac{[1,939,780.30 \div 150,490.10]}{420,000 \div 2,220,652} (420,000) = ₱324,631.80$$

Depletion charge for period from January 1 to June 30, 1955	324,631.80

The following shall constitute the mine property investment which shall be subject to depletion:

(*a*) purchase price of the property.

(*b*) capital development (as distinguished from stope development).

(*c*) mine rehabilitation.

6. *Transportation.*—Transportation charges shall include the cost of transportation of the bullion from the Philippines to a foreign refinery and other expenses whether incurred in the Philippines or abroad.

7. *Newly Mined Gold.*—All gold offered for sale to the Central Bank under the provisions of the Gold Subsidy Law shall be accompanied by a notarized certificate by the President or General Manager of the company concerned that gold so sold is "newly mined gold". Any gold producer who shall offer for sale to the Central Bank not "newly mined gold" shall be barred from receiving the benefits in the law in addition to the penalties provided for.

8. *Refined Gold.*—For purposes of these regulations "refined gold" shall mean gold that has been refined or purified to a minimum fineness of .999, and to be certified as to its fineness by an agency which is acceptable to the Central Bank.

9. *Total Receipt.*—Total receipts as used in section 2, "*w*" and "*x*" of the Gold Subsidy Law shall refer to income from mineral products arising from their mining operations.

10. *Manner of Payment.*—For bullion to be refined abroad which shall be offered for sale to the Central Bank, the official price shall be paid by the Central Bank upon presentation of the certificate of deposit issued by the Federal Reserve Bank for the account of the Central Bank of the fineness as provided in these regulations. The Central Bank shall issue a receipt therefor indicating the number of ounces of gold so sold and paid for, a duplicate of which shall be sent to the Gold Subsidy Board. Upon presentation of this receipt by the gold producer to the Board, the latter shall determine the amount of subsidy to which it may be entitled and the Board then shall issue to the Central Bank an authority of payment of the subsidy to the gold producer.

For bullion refined locally, the refined gold sold to the Central Bank shall be accompanied by the certificate of the required fineness as herein provided, and the manner of payment of the official price plus subsidy to which the seller (gold producer) is entitled shall be in the same manner outlined above.

11. *Quarterly Reports.*—All gold producers desiring to receive the benefits of this Act must regularly submit quarterly reports to the Board containing the quarterly quantity and value of their gold production, cost of production as defined in the Gold Subsidy Act, information regarding labor

turn-over, and such other data and information as may be required by the Board in the form to be recommended by the Technical Committee and approved by the Board. Failure to submit such quarterly reports regularly within the period required shall bar that company from receiving the benefits of the subsidy for the semester or semesters corresponding to the quarter or quarters wherein no such reports are submitted.

12. *Inspection.*—Any member of the Gold Subsidy Board and of the Technical Committee, or his duly authorized representative, shall have the authority and prerogatives of the Director of Mines and his deputies as to inspection of mines, property and plants, and examination of books of accounts and records of any gold producers whose duty it shall be to give the necessary facilities for such inspection and examination during reasonable office hours. Any company who shall not cooperate with any member of the Board in the course of his examination and inspection shall be presumed to have waived the benefits he may be entitled to receive under the provisions of the Gold Subsidy Law.

13. *Estimated Sale.*—Within five days before the beginning of each calendar quarter, it shall be the duty of any gold producer desiring to receive the benefits under the Gold Subsidy Law to submit to the Board through the Technical Committee an estimate of the quantity of ounces of refined gold it expects to sell to the Central Bank for that quarter.

14. *Allocation of Subsidy Fund.*—In the event that the funds certified at any one time by the Secretary of Finance and by the Central Bank are not sufficient to cover the amount of subsidy for that particular quarter, the gold producers will be entitled to a prorated subsidy.

Approved by the Gold Subsidy Board at its meeting held in the Agriculture Building on September 21, 1954.

SALVADOR ARANETA
Secretary of Agriculture and Natural Resources and Chairman, Gold Subsidy Board

Attested:

BENJAMIN M. GOZON
Director of Mines and Executive Secretary

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

(Ad Interim Appointments)

November 1954

Amado Roan as Judge of the Municipal Court of Manila, November 26.

Crispin V. Bautista as Solicitor in the Office of the Solicitor General, November 26.

Leon T. Garcia as Consul of the Republic of the Philippines, November 27.

December 1954

Conrado Limcaoco and Miss Sumilang Bernardo as Solicitors in the Office of the Solicitor General, December 1.

Jose Leido as Member of the Monetary Board of the Central Bank of the Philippines, December 8.

Jose S. Camus as Full-Time Member of the Board of Governors, Rehabilitation Finance Corporation, December 10.

Oscar Ledesma, Felino Neri, Jose P. Trinidad, Emilio Galang, Eduardo Z. Romualdez, Teofilo D. Reyes, Sr., Pedro Teodoro, and F. Garay as Members of the Board of Supervisors of the Philippine Tourist and Travel Association, December 17.

Jose Lardizabal as Provincial Fiscal of Quezon, December 18.

Gabriel Valero as Provincial Fiscal of Laguna, December 18.

Carlos Z. Abiera as Provincial Fiscal of Marinduque, December 18.

Benjamin Gorospe as Provincial Fiscal of Iloilo, December 18.

Crisanto V. Varias as First Assistant Provincial Fiscal of Misamis Oriental, December 18.

Pedro Sara as Second Assistant Provincial Fiscal of Batangas, December 18.

Jaime Agloro as Second Assistant City Attorney of Quezon City, December 18.

Miguel Cuaderno, Sr., as Governor of the Central Bank of the Philippines, December 21.

Julian A. Buendia as Member of the Marikina Project Coordinating Committee, December 21.

Arsenio P. Luna as Member of the Board of Examiners for Civil Engineers, December 23.

HISTORICAL PAPERS AND DOCUMENTS

PRESIDENT MAGSAYSAY'S CHRISTMAS MESSAGE, DECEMBER 24, 1954

TO the people of the Philippines I extend my warmest Christmas greetings.

During the first year of this administration we have exerted great efforts to bring about a happier and fuller life for all, especially for those who know only want and misery.

God has blessed us with peace, rich resources, and ample capacity to achieve this objective.

I trust that as we continue working together in an atmosphere of goodwill, faith, and enthusiasm we shall surely continue adding to our initial gains until we shall have fashioned richer, more plentiful life for our people.

This is my wish for all of you this Christmas: something all of us can share, live for, and cary forward to fulfillment.

THE PRESIDENT'S REMARKS AT THE DINNER IN HONOR OF PRIME MINISTER KOTELAWALA, DECEMBER 24, 1954

YOUR EXCELLENCY, EXCELLENCIES, AND GENTLEMEN:

WE have looked forward to your visit not only for the pleasure of welcoming so distinguished a visitor but also for the opportunity of renewing and further strengthening the ties that bind your great country and ours. These ties link us, as well as the other countries in our parts of the world, with one another by virtue of certain affinities which our peoples have derived from the heritage of a common cultural past, our profession of a common political faith and pursuit of a common way of life.

And it is well that we pause from our respective tasks of nation building to affirm the existence of these ties, for today there are forces which threaten them in order to undermine our basic unity. These forces aim to destroy the fact of our kinship and affinity to further their own ends. But I have every confidence that your visit with us and the new strength that you have thereby infused into the friendship that has existed between our two countries will help defeat these ends.

Mr. Prime Minister, I am happy to welcome you and your distinguished party to the Philippines.

Excellency, Excellencies, Gentlemen, I ask you to join me in drinking to the health of His Excellency, the Governor General of Ceylon, and to the continued well-being and prosperity of a great country and a great people.

DECISIONS OF THE SUPREME COURT

[No. L-6091. Diciembre 10, 1954]

ALEJANDRO F. FERNANDEZ, demandante y apelado, *contra* ILUMINADA GALA-SISON, demandante y apelante

1. PRACTICA FORENSE; JURISDICCIÓN; LA CANTIDAD ALEGADA EN LA DEMANDA DETERMINA LA JURISDICCIÓN.—La apelante contiende que el Juzgado de Primera Instancia tenía jurisdicción sobre la materia del litigío, según las alegaciones de la demanda; pero cuando por convenio de hechos la obligación se redujo ₱884.50, dicho juzgado perdió dicha jurisdicción "careciendo de otra facultad distinta de la de sobreseer la demanda." *Se declara*: Que es regla bien establecida la de que las alegaciones de la demanda en una causa civil y las de la querella en una causa criminal son las que determinan la jurisdicción del juzgado, y no el resultado de las pruebas.
2. OBLIGACIONES Y CONTRATOS; PAGOS PARCIALES.—El agrimensor demandante reclamaba ₱3,687.50 por el saldo no pagado de sus honorarios y un 25 por ciento de la cantidad debida para honorarios de su abogado; pero, como las pruebas—según el juzgado inferior—demuestran que el demandante sólo cumplió dos de las tres condiciones del contrato, debía solamente cobrar las dos tercias partes (₱1,443.00) del total de sus honorarios convenidos (₱2,164.50); y como la demandada había pagado ya al demandante la cantidad de ₱1,280, queda un saldo de ₱163. *Se declara:* Que no erró el juzgado inferior al dictar sentencia por este saldo contra la demandada.

APELACIÓN contra una decisión del Juzgado de Primera Instancia de Manila. Pecson, J.

Los hechos aparecen relacionados en la opinión del Tribunal.

Pedro Insua en representación de la demandada y apelante Iluminada Gala-Sison.

Pedro B. Gonzales, Fernandez y Gonzales III en representación del demandante y apelado.

PABLO, *M.:*

Esta causa ha sido "certificada" ante este Tribunal por el de la Apelación porque se impugna la jurisdicción del juzgado que conoció de la causa.

El demandante alega en su demanda, entre otras cosas, que, como agrimensor debidamente licenciado y por la suma de ₱4,280, fué contratado por Socorro Manalo de Gala, Severino de Gala e Iluminada de Gala-Sison para medir once parcelas de terreno del intestado del finado Generoso de Gala; que los demandados solamente le pagaron ₱1,280, quedando un saldo de ₱2,950; que tiene derecho a cobrar un 25 por ciento de la cantidad debida para honorarios de abogado, o sea, ₱737.50; por lo que pida que se dicte sentencia a su favor por la suma de ₱3,687.50 y costas.

En la vista de la causa las partes sometieron el siguiente convenio de hechos:

"Mr. GONZALES:

Can we agree that the total amount of the survey made by the plaintiff was ₱2,313.04?

Mr. YNSUA:

We are willing to agree in the amount of ₱2,164.50, as per exhibit 11, consisting of two pages, as part of the deposition of Severino de Gala.

Mr. GONZALES:

And out of this amount of ₱2,164.50, you had paid the amount of how much.

Mr. YNSUA:

We paid the sum of ₱1,280.

Mr. GONZALES:

Admitted, leaving a balance of ₱884.50 due the plaintiff.

Mr. YNSUA:

(*Agreed.*) (pp. 6–7, t. n. t.; sesión de junio 29, 1950.)"

El Juzgado condenó a la demandada Iluminada de Gala-Sison a pagar la cantidad de ₱163 con interés legal y costas, absolviéndola en cuanto a los honorarios de abogado, y sobreseyendo la demanda en cuanto a Socorro Manalo de Gala y Severino de Gala.

La apelante contiende que el Juzgado de Primera Instancia de Manila tenía jurisdicción sobre la materia del litigio, según las alegaciones de la demanda; pero cuando por convenio de hechos la obligación se redujo a ₱884.50, dicho juzgado perdió dicha jurisdicción "careciendo de otra facultad distinta de la de sobreseer la demanda". Esta contención carece de base. Es regla bien establecida la de que las alegaciones de la demanda en una causa civil y las de la querella en una causa criminal son las que determinan la jurisdicción del juzgado, y no el resultado de las pruebas. (E. U., *contra* Mallari, 24 Jur. Fil., 378; Pueblo *contra* Hiok, 62 Jur. Fil., 539, Pueblo *contra* Vélez, R. G. No. L—41234, [Agosto 31, 1934]; Oteng *contra* Tan Kiem Tay Jintaro Uehara, 61 Jur. Fil., 90; Lim Bing It *contra* Hon. Fidel Ibañez, etc., et al., 49 Off. Gaz., 1420).

En la causa presente, el demandante reclamó el pago de ₱3,687.50, y por eso el Juzgado de Primera Instancia de Manila conoció de la misma; si después de la vista o en el curso de ella se redujo la reclamación a ₱884.50, no por eso pierde jurisdicción el Juzgado. Si se adopta la teoría de la apelante, el juzgado tendría jurisdicción provisional primero y, después de conocido el resultado de las pruebas, tendría o no tendría jurisdicción definitiva. El pleito judicial no se parece a un juego de basketball en que las partes tienen que ir de un lado a otro: el pleito sería engorroso. Los juzgados tienen demasiado trabajo para entretenerse en tales sutilezas. Dicha teoría es contraria al espíritu que informa nuestra legislación, así como al bien público y a las mismas partes interesadas. La misma apelante no querría ser demandada otra vez en

el juzgado municipal de Candelaria por la suma de ₱163, para no tener que pagar otros honorarios de abogado y costas.

El artículo citado por la apelante dice así: " * * * el juez de paz y el juez de un juzgado municipal tendrán jurisdicción originaria exclusiva cuando el valor del asunto o *importe de la demanda* no exceda de dos mil pesos, con exclusión de intereses y costas". (Art. 88, Ley No. 296). Debe notarse que la nueva ley emplea las palabras "el importe de la demanda" como las empleaba la antigua ley orgánica de los tribunales. "El importe de la demanda" es la que determina la jurisdicción.

—La apelante contiende que el juzgado *a quo erró* al dictar sentencia contra ella por la suma de ₱163 "no siendo la misma la materia del litigio".

El demandante reclamaba ₱3,687.50 por el saldo no pagado de sus honorarios y un 25% de la cantidad debida para honorarios de su abogado; pero como las pruebas—según el juzgado inferior—demuestran que el demandante sólo cumplió dos de las tres condiciones del contrato, debía solamente cobrar las dos tercias parties (₱1,443) del total de sus honorarios convendios (₱2,164.50); y como la demandada había pagado ya al demandante la cantidad de ₱1,280, queda un saldo de ₱163. No erró el juzgado inferior al dictar sentencia por este saldo contra la apelante.

Con esta resolución, cae por su base la contención de la apelante de que se dicte sentencia a su favor por honorarios de su abogado. Ni bajo la ley tiene derecho a lo que reclama (Art. 2208, Cód. Civ. de Filipinas, chuy *contra* Philippine American Life Insurance Co., 19 Lawyers Journal 547).

Se confirma la decisión apelada sin pronunciamiento sobre costas en esta instancia.

Parás, Pres., Bengzon, Padilla, Montemayor, A. Reyes, Jugo, Baustista Angelo, Concepcion y J. B. L. Reyes,, MM., están conformes.

Se confirma la decision.

[No. L-6410. November 24, 1954]

JUAN Y. BELTRAN, petitioner *vs.* THE HONORABLE EUSEBIO F. RAMOS, ETC., respondent

CRIMINAL PROCEDURE; VENUE OF CRIMINAL CASES; PURPOSE OF.—A criminal case should be instituted and tried in the municipality or province where the offense was committed or any of its essential ingredients took place. This is a fundamental principle, the purpose being not to compel the defendant to move to, and appear in a different court from that of the province where the crime was committed, as it would cause him great inconvenience in looking for his witnesses and other evidence in another place.

ORIGINAL ACTION in the Supreme Court. Prohibition.

The facts are stated in the opinion of the court.

Onofre M. Mendoza for petitioner.
Eusebio F. Ramos in his own behalf.

JUGO, *J.:*

The petitioner, Juan Y. Beltran, was charged before the Court of First Instance of Occidental Mindoro with the crime of malversation of public funds, alleged in the information to have been committed in the municipality of San José, province of Occidental Mindoro, on or about July 6 and 12, 1951. The trial commenced in the municipalities of San José, Mamburao, and Lubang, all of Occidental Mindoro. The continuation of the trial was transferred to the municipality of Calapan, province of Oriental Mindoro. The defendant Beltran, herein petitioner, objected to the continuation of the trial in Calapan on the ground that it is outside of the territorial boundaries of the province of Occidental Mindoro where the crime was committed. The trial court overruled the objection and ordered the trial to proceed in Calapan. The petitioner filed in this Court a petition for a writ of prohibition to enjoin the trial court from continuing the trial in Calapan.

The respondent contends that the provinces of Occidental and Oriental Mindoro constitute the Eighth Judicial District under the provisions of the Judiciary Act of 1948 (Republic Act No. 296). There being no separate court for the province of Occidental Mindoro, it is claimed that the judge of the district may hold his sessions in either of the two provinces. This contention is untenable in the present case for the reason that the Rules of Court expressly provide that a criminal case should be instituted and tried in the municipality or province where the offense was committed or any of its essential ingredients took place. This is a fundamental principle, the purpose being not to compel the defendant to move to, and appear in a different court from that of the province where the crime was committed, as it would cause him great inconvenience in looking for his witnesses and other evidence in another place. Although the judge of a district may hold sessions in any part of said district, yet he should hold the trial in any particular case subject to the specific provisions of section 14 (*a*), Rule 106, in order not to violate the Rules of Court and disregard the fundamental rights of the accused. Sometimes a judicial district includes provinces far distant from each other. Under the theory of the respondent, the accused may be subjected to the great inconvenience of going to a far distant province with all his witnesses to attend the trial there. This is prohibited by the Rules of Court as being unfair to the defendant.

There is no contradiction between the Judiciary Act and Rule 106, section 14(*a*). They should, therefore, be enforced together harmoniously.

In view of the foregoing, the respondent judge is enjoined from continuing the trial of the above-mentioned case in Calapan, Oriental Mindoro, and ordered to continue it in San José, Occidental Mindoro, without pronouncement as to costs.

Parás, C. J., Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Angelo Bautista, Concepcion, and *J. B. L. Reyes, JJ.,* concur

Petition granted.

[No. L-6494. November 24, 1954]

EUGENIO ANGELES, ETC., petitioner, *vs.* HONORABLE FRANCISCO E. JOSE, ET AL., respondents

1. CRIMINAL LAW; COMPLEX CRIME OF PHYSICAL INJURIES AND DAMAGE TO PROPERTY; INFORMATION CAN NOT BE SPLIT INTO TWO.—Where both physical injuries and the damage to property were caused by one single act of the defendant, the information cannot be split into two—one for physical injuries and another for damage to property.
2. ID.; ID.; PENALTY FOR.—When the execution of the act shall have resulted only in damage to property, the amount fixed in article 365 of the Revised Penal Code shall be imposed as a fine; but if physical injuries have also been caused, there should be an additional penalty for the latter.

ORIGINAL ACTION in the Supreme Court. Certiorari.

The facts are stated in the opinion of the court.

City Fiscal Eugenio Angeles and *Assistant Fiscals Atanacio R. Ombac* and *Lorenzo Relova* in their own behalf.

Jover Ledesma & Puno for respondents.

JUGO, *J.:*

Domingo Mejia y Soriano was charged before the Court of First Instance of Manila with the crime of damage to property in the sum of ₱654.22, and with less serious physical injuries through reckless negligence, committed in one single act. After the preliminary investigation, upon motion of the defense, the respondent court dismissed the case on the ground that the penalty prescribed by article 365 of the Revised Penal Code is only *arresto mayor* in its minimum and medium period which is within the exclusive jurisdiction of the municipal court. On the other hand, it is contended by the prosecution that the fine that may be imposed by the court on account of the damage to property through reckless negligence is from a sum equal to the amount of the damage to three times such amount, which shall in no case be less than ₱25. The respondent court, however, relies on the wording of the third paragraph of said article, which reads as follows:

"When the execution of the act covered by this article shall have only resulted in damage to the property of an-

other, the offender shall be punished by a fine ranging from an amount equal to the value of said damage to three times such value, but which shall in no case be less than ₱25."

The above-quoted provision simply means that if there is only damage to property the amount fixed therein shall be imposed, but if there are also physical injuries there should be an additional penalty for the latter. The information cannot be split into two; one for the physical injuries, and another for the damage to property, for both the injuries and the damage committed were caused by one single act of the defendant and constitute what may be called a complex crime of physical injuries and damage to property. It is clear that the fine fixed by law in this case is beyond the jurisdiction of the municipal court and within that of the court of first instance.

In view of the foregoing, the order of dismissal is hereby set aside, and the case remanded to the trial court for further proceedings, without pronouncement as to costs.

Parás, C. J., Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Bautista Angelo, Concepcion, and *J. B. L. Reyes, JJ.,* concur.

Order of dismissal set aside and case remanded to trial court.

[No. L-5944. 26 November 1954]

The CITY OF NAGA, petitioner, *vs.* THE COURT OF APPEALS and MARTIN SALES, respondents

1. LEASE; MARKET STALLS; SUCCESSFUL BIDDER OF STALL IS A LESSEE.—The juridical relation between the owner of a market stall and an occupant thereof, after a successful and approved bid of the latter, is that of lessor and lessee.
2. ID.; OBLIGATIONS OF THE LESSOR; LESSOR'S OBLIGATION TO MAINTAIN LESSEE IN THE PEACEFUL ENJOYMENT OF THING LEASED; COMPETITION OFFERED BY OTHER VENDORS IS NOT JURIDICAL DISTURBANCE BUT MERE TRESPASS—The competition offered by other vendors to the business of the lessee is not a juridical disturbance (*perturbación de derecho*) of the peaceful enjoyment of the stall leased but at most an act of mere trespass by third persons (*perturbación de mero hecho*). The prevention of such trespass is not included in the lessor's obligation or undertaking to maintain the lessee in the peaceful enjoyment of the stall leased to him.
3. ID.; WARRANTIES; LESSOR DOES NOT WARRANT THAT LESSEE WILL REALIZE PROFITS.—A contract of lease is no warranty by the lessor to the lessee that the latter will realize profits in his business venture. Even if the lessee should suffer losses he would still be bound to fulfill the terms of the contract.
4. MUNICIPAL CORPORATIONS; "ULTRA VIRES" ACTS OF AGENT DO NOT BIND THE CITY.—The city treasurer as agent of the City cannot bind the latter for acts beyond the scope of his authority.

APPEAL by certiorari from a decision of the Court of Appeals dated 19 June 1952.

The facts are stated in the opinion of the Court.

City Attorney Luis B. Uvero, Jose S. Sarte, and *Rodegelio M. Jalandoni* for petitioner.

Ozaeta, Roxas, Lichauco & Picazo for respondent Martin Sales.

PADILLA, *J.:*

This is a petition for a writ of *certiorari* to review a judgment rendered by the Court of Appeals which affirms that of the Court of First Instance of Camarines Sur in so far as it dismisses the complaint for detainer, because it allows the defendant to continue in possession of the stall in the market of the City of Naga referred to therein but orders him to pay to the City the sum of ₱800 for rentals thereof from June 1949 to March 1950, reverses it in so far as it dismisses the counter-claim for damages allegedly suffered by the defendant as lessee of the stall in the said market, and awards to the latter the sum of ₱8,185.50 as damages, with costs in both instances against the City of Naga.

As found by the Court of Appeals the respondent was the successful bidder of a stall in the market of the City of Naga and was granted the right to possess and occupy it beginning 25 January 1949, for and in consideration of a monthly rental of ₱80, which he paid up to the month of May 1949 and thereafter refused to pay because of the City's failure to clear "the sidewalk and alley surrounding appellant's stall at the back corner of the pavillion" of vendors who had been driven away from Zamora Street, despite demands made upon the city treasurer, mayor and council to do so—a failure which had caused him damages amounting to ₱8,185.50, a sum less than that demanded in his counterclaim. After the sidewalk and alley had been cleared of vendors on 28 March 1950 the respondent paid the monthly rentals.

As the City of Naga did not appeal from the judgment of the Court of First Instance of Camarines Sur rendered on appeal dismissing the complaint for detainer filed in the Municipal Court of the City of Naga, the only point submitted for review is whether the judgment of the Court of Appeals ordering the City of Naga to pay to Martín Sales, then appellant, now respondent, the sum of ₱8,185.50 for damages, is in accordance with law.

The right of Martín Sales to possess and occupy the stall 1–B in the market pavillion M–1 of the City of Naga as a result of his successful bid began on 25 January 1949. The due and unpaid monthly rentals were from June 1949 to March 1950. The unrealized profits in his grocery and dry goods business at the stall were for the same period. The new Civil Code (Republic Act No.

386) was approved on 18 June 1949, published in the Official Gazette in the June issue of that year, and took effect one year thereafter. So the contract of lease between the City of Naga and the stall-holder must be governed by the provisions of the Civil Code of 1889. The successful bidder who occupied and took possession of the stall could not be deemed to be a mere permitee or licensee, because that view might be correct if the stall where he was to display and sell his wares, merchandise and goods did not belong to the City of Naga. We fail to see how the juridical relation between the owner of the market stall and an occupant thereof, after a successful and approved bid, may be other than that of lessor and lessee.

Article 1554 of the old Civil Code provides:

> It shall be the duty of the lessor:
>
> 1. To deliver to the lessee the thing which is the subject-matter of the contract;
>
> 2. To make thereon, during the lease, all repairs necessary in order to keep it in serviceable condition for the purpose for which it was intended;
>
> 3. To maintain the lessee in the peaceful enjoyment of the lease during the entire term of the contract.

As lessor the City of Naga has fulfilled all the obligations imposed upon it by law. It delivered to the successful bidder the possession of stall 1–B in the Market Pavillion M–1 of the City of Naga; it was not required to make necessary repairs therein to keep it in serviceable condition for the purpose for which it was intended, because it was a newly constructed pavillion and the successful bidder undertook on his account to put up the partition or walling in the stall; it maintained the tenant in the peaceful enjoyment of the stall from June 1949 to March 1950. The stall-holder claims, however, that during the said period he failed to realize profits which he would have, had not the City of Naga allowed vendors to ply their trade on the sidewalk and alley surrounding his stall. Does that fact constitute a breach of the lessor's obligation to maintain the lessee in the peaceful enjoyment of the stall leased? The lessee has not been disturbed in his physical and material possession of the stall. The competition offered by the vendors is not a juridical disturbance (*perturbación de derecho*) of the peaceful enjoyment of the stall leased [1] but at most an act of mere trespass by third persons (*perturbación de mero hecho*) and the prevention of such trespass is not included in the lessor's obligation or undertaking to maintain the lessee in the peaceful enjoyment of the stall leased to him. A contract of lease is no warranty by the lessor to the lessee that the latter will realize profits in

[1] Article 1560, old Civil Code.

his business venture. Even if the lessee should suffer losses he would still be bound to fulfill the terms of the contract. That is the hazard of any business venture. As found by the Court of Appeals, it appears that after approving the bid of the respondent Martín Sales the vendors in Zamora street fronting the pavillion were driven away by the city authorities. That was a compliance with the terms of the notice of bid. Thereafter, about ten of them stationed themselves around the respondent's stall. This was the subject of his complaint to the city treasurer, mayor and council, but to no avail. It is contended, however, that such vendors were given permit or tickets by the City Treasurer to continue peddling or selling their wares which competed with those of the respondent Sales. It does not appear that such permit or ticket authorized the holder thereof to occupy exactly or precisely the sidewalk and alley surrounding the stall of the respondent. The very character of such vendors excludes the idea that they ware authorized to occupy the sidewalk and alley surrounding the respondent's stall. It just happened that they were seen and found plying their trade around it. But granting that there was such an authority, still the act of the city treasurer, in violation of an ordinance or against the very nature of a sidewalk and alley which are not to be occupied but to be used for passage by the people going to the market to make their purchases, cannot be imputed to the City of Naga. The City Treasurer as agent of the City cannot bind the latter for acts beyond the scope of his authority. No breach of the lease contract having been committed by the City of Naga, the respondent's counterclaim is devoid of legal foundation.

The judgment of the Court of Appeals under review is reversed in so far as it awards damages to the respondent Martín Sales to be paid by the City of Naga, without pronouncement as to costs.

Parás, C. J., Pablo, Bengzon, A. Reyes, Jugo, Bautista Angelo, Concepción, and *J. B. L. Reyes, JJ.*, concur.

Montemayor, J., reserves his vote.

Judgment reversed.

[No. L–6310. November 26, 1954]

ROSALIO PARQUI, plaintiff and appellee, *vs.* PHILIPPINE NATIONAL BANK, defendant and appellant

MORTGAGES; MORTGAGE OF PROPERTY NOT OWNED BY MORTGAGOR IS VOID; AS PURCHASER OF MORTGAGED PROPERTY, MORTGAGEE ACQUIRES NO BETTER RIGHTS, REGISTRATION OF MORTGAGE NOTWITHSTANDING:—Where the property mortgaged is not owned by the mortgagor the mortgage is void. As purchaser of the

mortgaged property, the mortgagee acquires no better rights, the registration of the mortgage notwithstanding.

APPEAL from a judgment of the Court of First Instance of Camarines Sur. Surtida, *J.*

The facts are stated in the opinion of the court.

Ramon B. de Leon Reyes and *Nemesio P. Libunao* for defendant and appellant.

Briones, Briones & Briones for plaintiff and appellee.

BENGZON, *J.:*

The Court of Appeals forwarded the record of this case because "no controversy exists as to the evidence and the facts proved thereby", the sole juridical question being, whether or not the Philippine National Bank acquired good title to the parcel of land covered by Original Certificate No. 2109, despite the forgery of the owner's signature to the mortgage deed.

The facts as found in the appealed decision are these:

"The land described in the complaint was originally registered in the name of the plaintiff under Original Certificate of Title No. 2109 of the Register of Deeds of this province. Fearing that he might lose his owner's copy of the title during his evacuations in 1944, the plaintiff entrusted it for safekeeping to one Feliciana Ordoñez. Soon after liberation, he asked her to return it to him, but she replied that it was lost. In August of 1950 while paying his land taxes in Tigaon, the Municipal Treasurer informed him that the land covered by his title already belongs to the Philippine National Bank. He immediately made inquiries at the Naga Agency of the Bank. From the information he gathered he learned that his land was mortgaged in his name by someone to secure the payment of a loan; that the mortgage was foreclosed due to non-payment of the loan; and that the land was finally adjudicated to the Philippine National Bank as highest bidder at the auction sale. He also learned that Original Certificate of Title No. 2109 was cancelled and that in lieu thereof, Transfer Certificate of Title No. 358 in the name of the Philippine National Bank was issued. To annul the mortgage, sale and the transfer Certificate of Title and to recover damages, the plaintiff instituted the present action against the defendants.

"The evidence has clearly established that sometime in March of 1946, Feliciana Ordoñez asked Roman Oliver to affix the signature of the plaintiff on an application for a loan from the Philippine National Bank. Oliver at first refused, but after such coaxing, Ordoñez succeeded in convincing him to go with her and with Quintina Palma, her daughter, to the house of Nestor Ruedas in Tigaon, Camarines Sur. Upon their arrival, Ruedas delivered to

him a residence certificate in the name of the plaintiff and joined Ordoñez in asking him (Oliver) to sign the name of the plaintiff on the application. Oliver again refused but Ruedas told him not to have any fear, because the land to be given in security for the loan is covered by a Torrens title whose owner is already dead. Ruedas told Oliver further that he would personally accompany him to the bank and attend to the negotiation of the loan. With this assurance, Oliver finally consented and he affixed accordingly the signature of the plaintiff on the loan application marked Exhibit A. After the act, they Oliver, Ruedas, Ordoñez and Quintina Palma, proceeded to the Agency of the Bank at the then municipality of Naga. Ruedas entered the Offices of the bank, while the others remained outside. After a while, Ruedas came back bringing with him the mortgage deed, Exhibit B, and asked Oliver to affix also on it the signature of the plaintiff. Oliver again wrote the signature of the plaintiff on this document. Later Ruedas asked him again to affix the signature of the plaintiff on the check marked Exhibit D. This Oliver likewise did. He then delivered the signed check to the cashier of the bank who paid him the sum of ₱400. Quintina Palma took the money from him, and from the bank they both went to a restaurant where they joined Ordoñez, Ruedas and Rosalia Palma, the other defendant. Upon order of Ordoñez, Quintina Palma gave Oliver ₱15 out of the money.

"The evidence has also established that the loan application Exhibit A, was favorably recommended for approval by the Sub-Agent of the bank at Tigaon. At the bottom of this exhibit is the indorsement recommending approval. This was accompanied by the agent's inspection *report Exhibit* 2, and by the income and expense statement of the borrower, Exhibit 3. On the basis of this recommendation and report, the bank granted the loan and accepted the real estate mortgage, Exhibit B, for its security. This document was subsequently registered in the office of the Register of Deeds, and because the loan was not paid on its maturity, the mortgage was foreclosed and the land sold at public auction to the bank as the highest bidder. On November 7, 1949, the land was finally adjudicated to the bank (Annex B) and subsequently the bank obtained the cancellation of Original Certificate of Title No. 2109 and the issuance of Transfer Certificate of Title No. 358 in its name in lieu thereof".

On the basis of the foregoing facts, the Honorable Jose T. Surtida, Judge, annulled the mortgage deed and the foreclosure proceedings, ordered the Register of Deeds of the Province to cancel the new certificate of title No. 358 in the name of the Philippine National Bank and to revive

the original certificate of title in the name of Rosalio Parqui. The bank appealed.

After carefully considering the issue, we reach the conclusion that His Honor's decision was correct. One of the essential requisites of a valid mortgage, under the Civil Code is "that the thing pledged or mortgaged be owned by the person who pledges or mortgages it" (Art. 1857, par. 2); and there is no question that Ramon Oliver who pledged the property to the Philippine National Bank did not own it. The mortgage was consequently void.[1]

The appellant argues, in substance, that inasmuch as the forged mortgage had been registered, and the Philippine National Bank had purchased (at the foreclosure) in good faith relying upon such registered mortgage, it acquired a good title as purchaser in accordance with the doctrine that "under the Torrens Act a forged transfer when duly entered in the Registry of Property can become the root of a valid title in favor of a *bona fide* purchaser for value" (Cruz *vs.* Fabie, 35 Phil., 144). But in that case there was a forged *sale* (not mere mortgage) which was registered first, and the newly issued title was thereafter transferred to a bona fide purchaser. The principle implies that such *bona fide* purchaser was not a party to and did not know the first falsification. Anyway, it must be obvious that in this litigation, the National Bank could acquire no better rights *as purchaser* than those it had as *mortgagee.*

The appellant also cites Blondeau *vs.* Nano, 61 Phil., 629. It must be admitted that such decision contains some observations[2] favoring the appellant's side. But as we remarked in a recent decision (Lara et al. *vs.* Ayroso, G. R. L–6122 May 31, 1954) in Blondeau *vs.* Nano "the mortgage deed *had not been forged,* and the owner had by his negligence or acquiescense if not actual connivance made it possible for the fraud to be committed." More applicable to the instant appeal is the aforesaid Lara-Ayroso precedent wherein the owner's daughter somehow managed to obtain possession of the father's torrens title, and in connivance with an impostor who posed as her father and forged his signature to the mortgage deed, obtained a loan on the security of the father's land. We annulled the mortgage, declining to follow the obiter considerations in the Blondeau decision.

Thru Mr. Justice Reyes (Alex) this Court ruled:

"There can be no question that the mortgage under consideration is a nullity, the same having been executed by an impostor with-

[1] Veloso *vs.* La Urbana, 58 Phil., 681.

[2] Which were practically *obiter dictum,* because unnecessary to justify the resulting award.

out the authority of the owner of the interest mortgaged. Its registration under the Land Registration law lends it no validity because, according to the last *proviso* to the second paragraph of section 55 of that law, registration procured by the presentation of a forged deed is null and void."

It has not escaped our notice that in this litigation the owner delivered his title to Feliciana Ordoñez, whereas in the Lara-Ayroso case the owner kept his title in his trunk. Nevertheless there is no doubt that in both instances there was no permission granted by the owner for the use of his title; and in both instances said owner had been illicitly deprived of the possession of his decument of ownership.

A more serious point arises in connection with appellant's argument that upon being informed by Feliciana Ordoñez of the loss of his title the herein plaintiff should have given prompt notice to thé Register of Deeds of such loss, in accordance with section 55 of Act No. 496[3]; and that his failure to do so, is an element to be considered favorably to the defendant Bank. However it does not appear that this defense was interposed in the court below, although the complaint had alleged the reported loss in the hands of Feliciana Ordoñez. At any rate, it is not shown that before approving Oliver's mortgage, the Bank examined the records in the Register of Deeds and had thereby been misled to its prejudice.

Plaintiff's failure to send the prescribed cautionary notice would be material if it had contributed to the Bank's deception. Obviously, none would count it against him if the mortgage had been accomplished before he knew the loss of this title.

Indeed it may be gathered from the evidence that what actually led to the approval of the mortgage and the payment of the money to Roman Oliver, (personating Rosalio Parqui) was the "inspection report" of the Bank's agent D. Narvaez and his "income and expense statement", both positively identifying the borrower-applicant (Oliver) as Rosalio Parqui. In said two exhibits such agents made these remarks:

"I have a guide in inspecting the property, the owner-applicant himself, who is residing at the barrio of Tinauagan, Tigaon, Camarines Sur, with Resident Certificate No. 738661 dated February 21, 1946, issued at Tigaon, Camarines Sur."

"Mr. Rosalio Parqui is unmarried, nor has he any body under him for support. He lives in a very economical way and resides in the same property hereto offered by him as security." * * *

"Mr. Rosalio Parqui has never been a borrower from this Bank. In the past he always managed to keep his expenses within his income. However, because he wants to make a general recultiva-

[3] "* * * In case of the loss or theft of an owner's duplicate certificate, notice shall be sent by the owner or by some one in his behalf to the register of deeds * * *."

tion of his property which is hereto offered as security, he naturally needs some extra money. He is well known for his promptness in meeting his commitments."

And Narvaez did not declare under oath "that he thought Oliver was Parqui because the former exhibited to him the Certificate of Title No. 2109". Therefore it may not be said that the false personation happened thru Oliver's possession of the title.

An additional circumstance may be mentioned as an equitable feature of the controversy: One of the principal actors in the fraudulent scheme was Nestor Ruedas, who gave Oliver a new residence certificate in the name of Parqui, who persuaded him to sign for Parqui and later presented the mortgage papers to the Bank for approval. The plaintiff-appellee repeatedly states that Ruedas was "chief clerk of the municipal treasurer at Tigaon", a sub-agent of the Bank. If this is true,—appellant does not deny it—Ruedas was practically connected with the Bank, his knowledge of the impersonation being imputable to the said defendant institution.

For all these reasons, the appealed judgment should be and is hereby affirmed with costs.

Parás, C. J., Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, Concepcion, and *J. B. L. Reyes, JJ.,* concur.

Judgment affirmed.

[No. L-5538. 27 November 1954]

FAUSTINO DAVID ET AL., plaintiffs and appellees, *vs.* JOSE CABIGAO and THE STANDARD-VACUUM OIL COMPANY, defendants. THE STANDARD-VACUUM OIL COMPANY, defendant and appellant.

1. OBLIGATION AND CONTRACTS; BUILDER'S LIABILITY WHERE THE CONTRACTOR DID NOT FURNISH BOND AND EXECUTE AFFIDAVIT SHOWING THAT WAGES OF LABORERS EMPLOYED IN THE WORK HAD BEEN PAID.—Where the builder did not require the contractor to furnish a bond in a sum equivalent to the cost of labor and to execute an affidavit showing that the wages of the laborers employed in the work had been paid, he is l able jointly and severally with the contractor for the payment of such wages.

2. ID.; ID.; WHEN SHALL THE JOINT AND SEVERAL LIABILITY OF BUILDER AND CONTRACTOR ARISE; HOW BUILDER MAY RELIEVE HIMSELF FROM SUCH LIABILITY.—The joint and several liability of the builder and contractor to pay the wages of the laborers employed in the work arises only upon or from the failure of the builder to require from the contractor to execute an affidavit showing "that he first paid the wages of the laborers employed in said work." It does not arise from failure to require from the contractor that he furnish the bond. Hence, even if there be no such bond, the builder may still relieve himself from the liability created by the statute by requiring the contractor to execute the affidavit.

3. ID.; ID.; ID.; BOND REQUIREMENT IS NO INTERFERENCE, OR CURTAILMENT, OR RESTRAINT, OF A DEPRIVATION OF BUILDER'S FREEDOM TO CONTRACT.—The bond requirement is no interference, or curtailment, or restraint, much less a deprivation, of the builder's freedom to contract, because he may enter into a contract without requiring the contractor to furnish the bond and simply require him before paying the full amount to which he is entitled under the contract to execute the affidavit required by the Act. Such affidavit does not affect the builder's freedom to acquire property, because it is required after the construction or work has been done or accomplished.

4. ID.; ID.; ID.; ID.; ACT NO. 3959 IS CONSTITUTIONAL.—Granting that the provisions of Act No. 3959 under consideration constitute an interference, or restraint, or curtailment of the freedom of the citizen to contract or to acquire property, still such interference, or curtailment, or restraint being reasonable is a valid exercise of the police power of the state for the promotion of the general welfare, because the Act concerns itself with and affects the welfare of a great number of people—the wage earners.

APPEAL from a judgment of the Court of First Instance of Manila. Pecson, J.

The facts are stated in the opinion of the court.

Ross, Selph, Carrascoso & Janda for defendant and appellant.

Roberto P. Ancog & Antonio S. Atienza for plaintiffs and appellees.

PADILLA, *J.:*

For the building of a service station at Cubao, Quezon City, the Standard-Vacuum Oil Company engaged the services of José Cabigao as contractor who hired the plaintiffs as carpenters, masons and laborers to work on the construction. The contractor had been paid in full for the construction of the station by the Standard-Vacuum Oil Company but has not paid fully the wages of the artisans for work performed by them from 1 November to 2 December 1948. For such failure the artisans brought an action in the Municipal Court of Manila to recover from the contractor and the Company the sum of ₱1,264.50, lawful interest and costs. The company having raised the point of unconstitutionality of Act No. 3959 upon which the artisans rely to recover their due and unpaid wages, the Municipal Court forwarded the case to the Court of First Instance.

Upon stipulation of facts which reads, as follows:

Come now plaintiffs and defendant Standard-Vacuum Oil Company, by their respective undersigned attorneys, and to this Honorable Court respectfully submit the following stipulations:

1. That José Cabigao, as contractor, and Standard-Vacuum Oil Company, as builder, entered into a contract for the conservation of the latter's Cubao Service Station at a price of ₱17,360; that, subsequently, the parties agreed that additional work be performed for which Standard-Vacuum Oil Company agreed to pay Jose Cabigao ₱2,766.25;

2. That the full amount aforesaid has been already paid by Standard-Vacuum Oil Company to José Cabigao although this is questioned by José Cabigao;

3. That José Cabigao has failed to pay his laborers, the plaintiffs, the full amount of their wages, the following being the balance still due:

Name	Balance due
Faustino David	₱85.50
Dely Macapagal	55.00
Adriano Sunga	211.50
Estanislao Olisco	122.50
Diosdado Regalado	122.50
Pedro Medina	107.50
Federico "Doe"	127.50
Edilberto Sunga	127.50
Florencio "Doe"	67.50
Irineo Sunga	76.50
Marcos Catbagan	92.00
Juanito Catbagan	69.00
Total	₱1,264.50

4. That Standard-Vacuum Oil Company has refused to pay the said balance to plaintiffs for the following reasons:

(*a*) That as aforesaid, it has already paid the entire price agreed for the construction of the service station in question to José Cabigao;

(*b*) That it has no privity of contract whatsoever with plaintiffs; and

(*c*) That the law under which plaintiffs claim payment from Standard-Vacuum Oil Company is unconstitutional.

5. That plaintiffs and Standard-Vacuum Oil Company will file their respective memoranda within ten (10) days from the submission of the stipulation to further amplify their respective contentions, and another ten (10) days to reply to each other, and thereafter this case shall be considered submitted for decision of the Court.

Manila, Philippines, February 7, 1950.

CECILIO I. LIM & ATONIO S. ATIENZA

By (Sgd.) ANTONIO S. ATIENZA
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Bureau of Labor, Manila

ROSS, SELPH, CARRASCOSO & JANDA

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Standard-Vacuum Oil Company
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the Court rendered judgment ordering the defendants jointly and severally to pay to the plaintiffs the sum of ₱1,264.50 together with lawful interest from the date of the filing of the complaint until paid and José Cabigao to pay to the Standard-Vacuum Oil Company the same amount it shall have paid to the plaintiffs and lawful interest thereon from the date of the filing of the cross-claim, and dismissing the counterclaim of the company for lack of evidence to support it, with costs against the defendants. Only the Standard-Vacuum Oil Company has appealed.

The appellant assails the constitutionality of Act No. 3959.

Section 1 of the Act provides:

> Any person, company, firm, or corporation, or any agent or partner thereof, carrying on any construction or other work through a contractor, shall require such contractor to furnish bond in a sum equivalent to the cost of the labor, and shall take care not to pay to such contractor the full amount which he is entitled to receive by virtue of the contract, until he shall have shown that he first paid the wages of the laborers employed in said work, by means of an affidavit made and subscribed by said contractor before a notary public or other officer authorized by law to administer oaths: * * *.

Section 2 provides:

> Any person, company, firm, or corporation, or any agent or partner thereof, who shall violate the provisions of the preceding section by paying to the contractor the entire cost of the work before receiving the affidavit mentioned in said section, shall be responsible jointly and severally with the contractor for the payment of the wages of the laborers employed in the work covered by the contract. In case the violation is committed by a company or corporation, the liability for the violation of this Act shall devolve upon the agent, director, or manager, or upon the person having charge of the management, direction or administration of the work.

It does not appear from the stipulation of facts that the appellant, as builder, required the contractor to furnish a bond in a sum equivalent to the cost of labor and to execute an affidavit showing that he had paid the wages of the laborers employed in the work. In the absence thereof, it may be presumed that no such bond was furnished and no such affidavit was executed.

Act No. 3959 requires of any one ordering the construction of a building or work to demand from the contractor that he furnish a bond in a sum equivalent to the cost of the labor. For whose benefit is such bond? For the one ordering the construction or for the laborers to be employed in it? If for the latter, the beneficiaries of the bond would be innominate and the one ordering the construction would no longer have any liability. If the amount of the bond furnished which is the estimated or approximate cost of labor should be or should turn out to be less than the amount actually incurred in or owed by the contractor to the laborers, would the one ordering the construction or work be liable for the deficiency? Of course he would not be liable. The contractor alone would be. If the bond is for the one ordering the construction or work, it must be for the purpose of reimbursing him for whatever amount he may be held liable to pay or had been ordered to pay or had actually paid. If the bond be furnished, it would no longer be necessary for the one ordering the construction to require the contractor to execute an affidavit showing that he first paid the wages of the laborers engaged in the construction, before paying him the full amount to which he is entitled to receive

under the contract, because the bond would reimburse him (the builder) for whatever amount he may be held liable to pay or had been ordered to pay or had actually paid. If the builder required the contractor to execute and the latter executed an affidavit stating "that he first paid the wages of the laborers employed in said work," before paying him the full amount to which he is entitled to receive under the contract, would that affidavit alone be sufficient to relieve him (the builder) from the liability created by the statute even if he had failed or neglected to require the contractor to furnish the bond? If he is relieved, then both the bond and the affidavit need not be required of the contractor. Either one would be sufficient. The bond is to reimburse the builder for whatever amount he may be held liable to pay or had been ordered to pay or had actually paid and the affidavit, to relieve the builder from his statutory liability to pay for wages not paid by the contractor. If that is a correct interpretation of the law under consideration, and this construction finds justification in section 2 of the Act above quuoted, then the bond requirement is not mandatory but directory for the benefit and protection of the builder. It should be noted that the joint and several liability of the builder and contractor would only arise upon or from the failure of the builder to require from the contractor to execute an affidavit showing "that he first paid the wages of the laborers employed in said work," before paying him the full amount to which he is entitled to receive under the contract. It does not arise from failure to require from the contractor that he furnish the bond. Hence, even if there be no such bond, the builder may still relieve himself from the liability created by the statute by requiring the contractor to execute an affidavit described and referred to in the Act. Such being the case, the bond requirement, whether for the benefit of the laborers or of the builder, since it assures the laborers payment of their wages or the builder reimbursement for whatever amount he may be held liable to pay or had been ordered to pay or had actually paid, is no interference, or curtailment, or restraint, much less a deprivation, of the builder's freedom to contract, because he may enter into a contract without requiring the contractor to furnish the bond and simply require him before paying the full amount to which he is entitled under the contract to execute the affidavit required by the Act, and still relieve himself from the statutory liability. Such affidavit to be executed by the contractor does not affect the builder's freedom to acquire property, because it is required after the construction or work has been done or accomplished. But even if the provisions of the Act under consideration be deemed to constitute an interference, or restraint, or cur-

tailment of the freedom of the citizen to contract or to acquire property, still such interference, or curtailment, or restraint provided for in the Act being reasonable is a valid exercise of the police power of the state for the promotion of the general welfare, because the Act concerns itself with and affects the welfare of a great number of people—the wage earners— who live by the sweat of their brow, and ultimately that of all the people and inhabitants of the country who as a result of the contentment of such great number of people will enjoy peace and order.

The judgment is affirmed, without pronouncement as to costs in this instance.

Parás, C. J., Pablo, Bengzon, Jugo, Bautista Angelo, Concepción, and *J. B. L. Reyes, JJ.,* concur.

Montemayor and *A. Reyes, JJ.,* concur in the result.

Judgment affirmed.

[No. L-5080. November 29, 1954]

REPUBLIC OF THE PHILIPPINES, plaintiff and appellant, *vs.* ENRIQUE LARA, ET ALS., defendants and appellants.

1. EMINENT DOMAIN; RESIDENTIAL NATURE OF LAND IS NOT DESTROYED BY ITS CONVERSION INTO AN AIRFIELD; NATURE OF LAND DETERMINED BY ITS USE.—The residential nature of the parcels of land in question is not destroyed by the fact that at the time of their taking by the plaintiff they were converted into an airfield and were no longer fit for residential purposes. As was held in Republic *vs.* Garcia, L-3526, March 27, 1952, the decisive factor in the classification of land is the "use to which the land was dedicated before the war and the use to which it could have been dedicated thereafter if it had not been taken by the U. S. Army."
2. ID.; ID.; VALUE OF LAND EXPROPRIATED MUST BE RECKONED AS OF THE TIME OF ACTUAL POSSESSION.—Where the actual taking or occupation by the plaintiff of the land sought to be expropriated, with the consent of the landowner, long precedes the filing of the complaint for expropriation, "the value of the property should be fixed as of the date when it was taken and not the date of the filing of the proceedings." (Citing Provincial Government of Rizal *vs.* Caro, 58 Phil., 308.)
3. ID.; ID.; ID.; COMPENSATION; IN PARTIAL EXPROPRIATION, OWNER IS ENTITLED TO DAMAGES CAUSED TO REMAINING LAND.—Where only a part of a parcel of land is taken by eminent domain, the landowner is not restricted to compensation for the land actually taken; he is also entitled to recover for the damage to his remaining land.
4. ID.; ID.; ID.; ID.; COMPETENT EVIDENCE OF THE REASONABLE WORTH OF LAND TAKEN.—BONA FIDE SALES OF NEARBY PARCELS.—The competent evidence of the reasonable worth of the land taken is the *bona fide* sales of nearby parcels at times sufficiently coeval to the taking as to exclude general changes of value.
5. ID.; ID.; ID.; LANDOWNER IS ENTITLED TO INTEREST ON COMPENSATION FROM DATE OF ACTUAL TAKING; PAYMENT TO OWNER OR DEPOSIT OF MONEY IN COURT STOPS RUNNING OF INTEREST.—

The landowners are entitled to recover interest on the compensation from the date that the party exercising the right of eminent domain takes possession of the condemned lands, and the amounts granted by the court shall cease to earn interest only from the moment they are paid to the owners or deposited in court. (Philippine Railway Co. *vs.* Solon, 13 Phil., 34; Philippine Railway Co. *vs.* Duran, 33 Phil., 156; and Manila Railway Co. *vs.* Attorney General, 41 Phil., 163.)

6. ID.; ID.; ID.; ID.; INDEMNITY FOR RENTALS IS INCONSISTENT WITH PAYMENT OF LEGAL INTEREST.—Where the party taking the land is to pay interest on the compensation due to the landowners from the time of the actual taking, the latter can no longer claim for rental payments from the time of the actual taking to the filing of the complaint in court.

7. ID.; DAMAGES; INCONVENIENCE RESULTING FROM LOSS OF HOME OR ITS SENTIMENTAL VALUE TO OWNER IS NOT PROPER ELEMENT OF DAMAGE.—The inconvenience resulting from the loss of a home, or its sentimental value to the owner, is not a proper element of damage.

8. ID.; ACCESSION; RULES CONCERNING INDUSTRIAL ACCESSION ARE NOT APPLICABLE TO RELATIONS BETWEEN PRIVATE PERSONS AND SOVEREIGN BELLIGERENT; REPUBLIC OF THE PHILIPPINES IS THE LEGITIMATE SUCCESSOR TO PROPERTIES OWNED BY THE ENEMY OCCUPANT; LANDOWNERS ARE NOT ENTITLED TO COMPENSATION FOR SUCH IMPROVEMENTS.—The rules of Civil Code concerning industrial accession were not designed to regulate relations between private persons and a sovereign belligerent, nor intended to apply to constructions made exclusively for prosecuting a war, when military necessity is temporarily paramount. Consequently, in the case at bar, the Japanese occupant is not regarded as a possessor in bad faith of the lands taken from the defendants and converted into an airfield and campsite; its use thereof was merely temporary, demanded by war necessities and exigencies. But while the defendants remained the owners of their respective lands, the Republic of the Philippines succeeded to the ownership or possession of the constructions made thereon by the enemy occupant for war purposes, unless the treaty of peace should otherwise provide; and it is under no obligation to pay indemnity for such constructions and improvements.

APPEAL from a judgment of the Court of First Instance of Batangas. Enriquez, J.

The facts are stated in the opinion of the court.

Solicitor General Pompeyo Diaz and *Solicitor Jose G. Bautista* for the plaintiff and appellant.

Baldomero B. Reyes for defendants E. Silva, E. Lumbera and Teru Brothers.

Dionisio M. Lignao for the other defendants.

REYES, J. B. L., *J.:*

The Republic of the Philippines as well as defendants Enrique Lara, et al., are appealing from the decision of the Court of First Instance of Batangas, in its Civil Case No. 43, filed by the Republic for the expropriation of a large area of land (covering 187 parcels) located in Lipa City, upon which the Armed Forces of the Philippines

constructed and now operates and maintains the Fernando Air Base.

The land in question was, during the later part (1943) of the Japanese occupation, occupied by the enemy forces and converted into a campsite and airfield. The houses along the National Highway and the provincial roads were destroyed, and the fruit trees, orchards, and sugar crops cut down; in place thereof, the Japanese forces built concrete airstrips, concrete taxi-ways, dug-outs, canals, concrete ramps, ditches, gravel roads, and air raid shelters.

The battle for the liberation added to the devastation of the area in question. Upon liberation, the United States Army took possession of the airfield; and on July 4, 1946, the air base was handed over by the U. S. government to the Armed Forces of the Philippines. The Philippine Army then took steps to negotiate for the purchase of the area for the purpose of constructing thereat a permanent air base. A committee was appointed to make an appraisal of the parcels covered; several landowners sold their properties to the government at the prices fixed by the Appraisal Committee. The extrajudicial negotiations, however, fell through with respect to the greater majority of the land owners, who did not want to accept the prices offered by the government; hence, steps were taken towards the filing of the complaint for expropriation. On July 9, 1949, the complaint was finally filed in the Court of First Instance of Batangas, describing in detail the 187 parcels sought to be expropriated. On August 5, 1949, the lower Court fixed the provisional value of the parcels in question at ₱117,097.52, which amount the plaintiff deposited with the Philippine National Bank to the credit of the City Treasurer of Lipa. As none of the defendants questioned the purpose of the expropriation in their respective answers, the lower Court appointed three commissioners to view the land, hear the evidence, and ascertain the just and reasonable compensation for the properties sought to be taken. In the meantime, many of the defendants, with the approval of the Court, made withdrawals from the provisional deposit made by the government.

On February 9, 1951, the Commissioners submitted their report to the Court below, classifying the parcels in question into residential and agricultural, and recommending as fair and reasonable market value: (1) for residential lands, ₱1 per square meter; (2) for agricultural lands within 500 meters from either the National Highway going to Batangas or the provincial road leading to the town of Mataas na Kahoy (designated as "Group A"), ₱2,500 a hectare or ₱0.25 per square meter; and (3) for the rest of the agricultural lands (designated as "Group

B"), ₱2,000 a hectare or ₱0.20 per square meter. The Commissioners further recommended the payment of 6 per cent interest per annum to the defendants on the amount awarded or remaining payable computed from November 17, 1949; the payment of ₱200 on each parcel of which only a portion was being expropriated, as consequential damages, plus the expenses for the subdivision and issuance of new certificates of title; and the indemnification to some defendants of the value of fruit trees found on their lands.

Both parties objected to the report; but the lower Court on March 31, 1951 rendered its decision, accepting most of the recommendations of the Commissioners on the just and reasonable compensation for the parcels expropriated, as well as the payment of consequential damages to some of the defendants, and of 6 per cent interest to all of them on the amounts awarded and unpaid; but rejected the report insofar as it recommended the payment of ₱12 per square meter for the concrete airstrip, taxi-way, and ramp built by the Japanese forces on some of the parcels in question; the indemnification for the value of fruit trees found on the lands of some of the defendants; and the payment of the expenses for the subdivision and issuance of new certificates of title to those whose lands were only partially expropriated. Both the plaintiff and the defendants (with the exception of Eliseo Silva, Enrique Lumbera, the Teru brothers, and Eleno Dizon) in time perfected their joint appeal to this Court.

The basic dispute naturally lies on the reasonable value of the lands sought to be expropriated, with the question of the extent of damages and interest payable to the defendants as a secondary issue.

The main propositions submitted by the plaintiff-appellant are as follows:

(1) None of the parcels sought to be expropriated were residential at the time of the expropriation;

(2) The value of the land expropriated must be reckoned as of the time of the actual possession thereof by the plaintiff in 1946, and not as of the time of the filing of the complaint in 1949;

(3) The lower Court awarded to some of the defendants unproved consequential damages but failed to consider the consequential benefits;

(4) The interest that should be awarded to the defendants should be computed only on the amount due to them in excess of the provisional deposit made after the filing of the complaint.

On their part, the defendants-appellants raise the following questions:

(1) The lower Court should have awarded at least ₱1.70 per square meter for residential lots; ₱4,000 a hec-

tare or ₱0.40 per square meter for agricultural lands under "Group A"; and ₱3,500 a hectare or ₱0.35 per square meter for agricultural lands under "Group B";

(2) The lower Court should have awarded compensation of at least ₱5 per square meter for the concrete airstrip, rampways, and taxi-ways found on some of the parcels in question;

(3) Some of the lots should have been classified as residential instead of agricultural; and others which are near or along the provincial road should be classified under "Group A" instead of under "Group B" agricultural lands;

(4) In fixing the just compensation for the parcels in question, the lower Court should have taken into account the fact that the said lots are already valuable for and adapted to airfield purposes; that plaintiff did not pay any rentals from July 4, 1946 when it took possession, up to November 21, 1949, when the trial court authorized it to take possession; and that many of the defendants-appellants have been rendered landless by the expropriation of their sole landholdings.

Plaintiff-appellant's first argument that none of the parcels in question should be classified as residential because at the time they were taken, they were no longer fit for residential purposes, is without merit. According to the findings of the Commissioners appointed by the Court below, before the war and up to September, 1943, when the Japanese occupied the area in question and converted the same into an air field, there were houses 20 to 40 years old along the National Highway leading to Lipa, Batangas, and the provincial road to Mataas na Kahoy; and it appears from the evidence that after the war, the defendants would have again built their homes on these lands had not the Army authorities restrained them from doing so. Furthermore, the residential nature of the lands along these two roads is, as found by the Court *a quo*, borne out not only by the topography of the land and other advantages mentioned in the Commissioners' Report, but also by the tax declarations Exhs. R to R–128, (presented by the plaintiff-appellant as its evidence without qualification), based on a general revision throughout the country in accordance with a schedule of values approved by the Secretary of Finance (Record on App., p. 781), and not upon declaration of the taxpayers. It is of no moment that at the time the Philippine Army took possession of the whole area in question, it had been thoroughly cleared and converted into an airfield by the Japanese enemy forces; and that the battle for liberation left the area even more devastated that it was not then fit for residential purposes. As we have held in Republic *vs.* Garcia, L–3526, March 27, 1952.

"Nor is the absence of private houses a decisive factor in the classification of land as agricultural or residential. Under the circumstances of this case, *the important consideration is the use to which the land was dedicated before the war and the use to which it could have been dedicated thereafter if it had not been taken by the U. S. Army.*"

Plaintiff-appellant's second argument—that the value of the lands expropriated must be reckoned as of the time of the actual possession by it in 1946 and not as of the time of the filing of this complaint in 1949— is, however, well taken. We believe the Court below erred in holding that because section 5 of Rule 69 now provides that the payment of just compensation must be determined as of the date of the filing of the complaint, our ruling in the case of Provincial Government *vs.* Caro, 58 Phil., 308, is deemed superseded. Ordinarily, inquiry is limited to actual market values at the time of the institution of the condemnation proceedings because, under normal circumstances, the filing of the complaint coincides or even precedes the taking of the property by the plaintiff; and Rule 69 simply fixes this convenient date for the valuation of property sought to be expropriated. Where, however, the actual taking or occupation by the plaintiff, with the consent of the landowner, long precedes the filing of the complaint for expropriation, the rule to be followed must still be that enunciated by us in Provincial Government of Rizal *vs.* Caro, *supra*, that "the value of the property should be fixed as of the date when it was taken and not the date of the filing of the proceedings". For where property is taken ahead of the filing of the condemnation proceedings, the value thereof may be enhanced by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time it is taken to the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken. This is the only way the compensation to be paid can be truly just; i.e., "just" not only to the individual whose property is taken, "but to the public, which is to pay for it" (18 Am. Jur., 873, 874).

The inquiry, therefore, is: What would be the reliable standard for determining the reasonable worth of the parcels in question when the plaintiff began occupying them in 1946? On this question, courts have consistently considered as competent evidence *bona fide* sales of nearby parcels at times sufficiently equal to the taking as to ex-

clude general changes of value; and we see no reason to divert from this rule, considering that neither the price that the owners ask for their property, nor the assessed value thereof, is relevant in determining the reasonable market value (Manila Railroad Co. *vs.* Mitchel, 49 Phil., 801; Municipality of Tarlac *vs.* Besa, 55 Phil., 423).

The only deeds of sale of nearby lands presented by the plaintiff-appellant are Exhibits "B" to "M", executed during the years 1936 to 1941; and Exhibits "T" to "T–4", extrajudicial sales of some parcels within the Fernando Air Base made by the owners to the government before the filing of these proceedings at the prices offered by the Appraisal Committee of the Philippine Army. As correctly held by the Court below, these sales are incompetent in determining the reasonable value of the lands in question at the time they were taken in 1946. For, apart from being unsupported by oral evidence, Exhibits "B" to "M" were made before the war, at least 5 years before the taking. In this case, and judicial notice may be taken of the fact that because of post war inflation, prewar prices of real estate had risen considerably in 1946 and subsequent years; while the sales Exhibits "T" to "T–4" are "in the nature of a compromise" to avoid the risk of legal proceedings and are not prices (of land) obtained by one who desires but is not obliged to sell it, and is bought by one who is under no necessity for having it". (City of Manila *vs.* Estrada, 25 Phil., 222–223).

Upon the other hand, the defendants-appellants presented Exhibits 2, 4, 13, 15, 16 and 21–Lingao, sales of nearby parcels in 1945, 1947, and 1948 to 1950, and duly identified by either the vendees or the vendors and affirmed as having been made in the ordinary course of business. We particularly note that Exhibit 4–Lingao and Exhibit 21–Lingao were made in 1945 and 1947 respectively, just a year before and after the actual occupation by the plaintiff of the parcels in question in 1946. Under Exhibit 4-Lingao, a parcel of riceland located about one kilometer from the western boundary of the air base (t. s. n. p. 300) was sold for about ₱0.18 per square meter. In an effort to discredit this exhibit, plaintiff-appellant insists that this sale not only includes the land conveyed but also "the improvements" thereon. As correctly observed by the Court below however, the inclusion of the phrase " and the improvements" in the deed appears to have been a mere matter of form, for it is an undisputed fact that the whole area in question was so devastated after the liberation that no improvements could possibly have remained thereon in 1945 when Exhibit 4–Lingao was made (See Plaintiff-Appellant's Brief, p. 8). The other exhibit, 21–Lingao, executed in 1947, is a sale of riceland about 500 meters from the nearest lot in the

base (t. s. n. p. 499) at approximately ₱0.21 per square meter. It should be noted that the lands sold under these two deeds appear to be below the quality of the land covered by the air base, which the Commissioners found to be "first class sugar land" (t. s. n. pp. 203, 208, 287).

Now, while the other exhibits for the defendants-appellants are sales of neighboring agricultural lands during the years 1948 to 1950, they do not show any appreciable increase in price from those quoted in Exhibits 4 and 21–Lingao made in 1945 and 1947; the lands sold thereunder appear to be generally priced at about ₱0.20 per square meter. Hence, we see no error in the lower Court's approval of the recommendations of the Commissioners on the just and reasonable value of the parcels in question classified as agricultural land; that is, ₱0.25 per square meter for Class A (within 500 meters from the road) and for Class B (beyond 500 meters) ₱0.20 per square meter.

As to the value of the lots classified as residential by the Commissioners, the relevant transactions appearing on record are: Exhibit 14–Lingao, sale made in 1949, at about ₱1.71 per square meter; Exhibit 22–Lingao, dated 1950, at about ₱0.84 per square meter; Exhibit 10–Reyes, dated February 8, 1948, at ₱1 per square meter; and Exhibit 14–Reyes, a sale of residential land in 1950, at about the same price. Upon this evidence, the value of ₱1 per square meter, adopted by the Commissioners and the Court below, appears adequately justified.

For the above reasons, we overrule the contention of defendants-appellants that the values of their respective parcels are higher than the prices recommended by the Commissioners on Appraisal appointed by the Court below.

We also find untenable the argument of defendants-appellants that lots 6132–A, 6133, 6135–A, 6613, 6612, and 6609, which are located along the provincial road to Mataas na Kahoy, should be classified as residential. The findings of the Commissioners that these lands are adapted for residential purposes obviously cannot refer to the totality of said lots, some of which are thousands of square meters in area, and hundreds of meters away from the road. It was incumbent upon the defendants to prove what portions of these lots are residential, but they have failed to do so. Hence, these parcels must be classified only as "Group A" agricultural lands. As the decision appealed from already includes lots 6132–A, 6133, and 6135–A, and 6135–B under this category, it is to be modified in the sense that lots 6613, 6612, and 6609 should also be classified as "Group A" agricultural lands.

However, we find well-taken the error raised by the defendants-appellants that lots Nos. 6604–A, 6606–A,

6610–A, 6611–A, 8445, and 6247–A should be classified as "Class A" agricultural lands (that is, lands found within 500 meters from the National Highway or the provincial roads) because the survey plan, Exhibit V of the plaintiff, discloses that these lots are located within 500 meters from the provincial road to Mataas na Kahoy.

On the question of whether the owners of the parcels upon which the Japanese Army had built a concrete airstrip, runway, and taxiway should be compensated for the value of these improvements, we agree with the Court below that these improvements should be excluded as an element of appreciation or damage, on the ground that "the Republic of the Philippines as victor in the last war should be considered the legitimate successor to the properties owned by the Japanese in the Philippines" (Rec. on App., p. 783).

Defendants-appellants insist that a belligerent occupant could not take private property without compensation; that the Japanese forces were possessors of their lands in bad faith; and that therefore, the improvements constructed thereon by them should, under our civil law, belong to the owners of the lands to which they are attached. This argument is untenable. In the first place, the rules of Civil Code concerning industrial accession were not designate to regulate relations between private persons and a sovereign belligerent, nor intended to apply to constructions made exclusively for prosecuting a war, when military necessity is temporarily paramount. In the second place, while art. 46 of the Hague Regulations provide that "private property may not be confiscated", confiscation differs from the temporary use by the enemy occupant of private land and buildings for all kinds of purposes demanded by the necessities of war (II Oppenheim, Int. Law, Lauterpacht Edition, sec. 140); thus, the U. S. War Department Rules of Land Warfare of 1940 provide that—

> "the rule requiring respect for private property is not violated through damage resulting from operations, movement, or combats of the army, that is, real estate may be utilized for marches camp sites, construction of trenches, etc. Buildings may be used for shelter for troops, the sick and wounded, for animals, for reconnaisancc, cover defense, etc. Fences, woods, crops, buildings, etc. may be demolished, cut down, and removed to clear a field of fire, to construct bridges, to furnish fuel if imparatively needed for the army." (Quoted in Hyde, Int. Law, Vol. II, p. 1894).

Consequently, the Japanese occupant is not regarded as a possessor in bad faith of the lands taken from the defendants-appellants and converted into an airfield and campsite; its use thereof was merely temporary, demanded by war necessities and exigencies. But while the defendants-appellants remained the owners of their respective lands, the

Republic of the Philippines succeeded to the ownership or possession of the constructions made thereon by the enemy occupant for war purposes, unless the treaty of peace should otherwise provide; and it is under no obligation to pay indemnity for such constructions and improvements in these expropriation proceedings.

With respect to the question of the propriety of the award of consequential damages to the owners of parcels which are only being partially expropriated, we do not think it was error for the Court below to award to each of these owners the sum of ₱200 as recommended by the Commissioners to compensate them for the damages to their remaining land. The rule is clear that "where only a part of a parcel of land is taken by eminent domain, the owner is not restricted to compensation for the land acually taken; he is also entitled to recover for the damage to his remaining land. * * * And there is no requirement that this damage be special and peculiar, or such as would be actionable at common law; it is enough that it is a consequence of the taking" (18 Am. Jur., 905; also, Jahr on Eminent Domain, Vol. III, p. 133–134; 29 C. J. S., 976–981). As may be observed from the survey plan of these parcels (Exhibit U of plaintiff), the partial expropriation would leave the residue of some of them without access to the roads; while the remaining portions of other parcels would be so irregular in shape or so small in area as to greatly depreciate their practical worth and market value. It may be added that as the Commissioners who recommended the payment of consequential damages to these owners had the opportunity to view the premises and determine the extent to which these remaining portions have been damaged, their report and recommendation as to the payment of damages are naturally entitled to great weight.

As for the alleged consequential benefits that would accrue to these parcels as a result of the establishment of the air base by the plaintiff, in that the value of the properties in the vicinity has generally increased, and that people have started to live and construct houses outside the base, they are much too speculative and uncertain. The fact is that three years after the taking over of the area by the Government, the Commissioners only found on ocular inspection, temporary shacks (barong-barong) mostly used for gambling purposes. The increase in assessed values, moreover, was due to Government action and did arise not from voluntary admission of the taxpayers.

As its last assignment of error, plaintiff-appellant submits that the lower Court erred in ordering it to pay 6% interest on the amounts awarded and unpaid to the defendants, computed from the filing of the complaint on November 17, 1949. It is plaintiff-appellant's contention that

it should be required to pay interest only on the balance of the aggregate value of the whole area in question, after deducting therefrom the sum of ₱117,097.52 which it had deposited at the commencement of these proceedings. On this question, this Court has held "in unequivocal terms that the owners of expropriated lands are entitled to recover interest from the date that the company exercising the right of eminent domain takes possession of the condemned lands, and the amounts granted by the court shall cease to earn interest only from the moment they are paid to the owners or deposited in court. (Philippine Railway Co. *vs.* Solon, 13 Phil., 34 and Philippine Railway Co. *vs.* Duran, 33 Phil., 156)." (Manila Railway Co. *vs.* Attorney-General, 41 Phil., 163). Applying this doctrine to the case at bar, the defendants-appellants should be paid legal interest on the amounts respectively awarded to them from the time the plaintiff took actual possession of their lands in July, 1946; the deposit by the plaintiff of the amount of ₱117,097.52 in 1949, however, stops the running of such interest with respect to the amount thus deposited.

Finally, the defendants-appellants claim that in fixing the reasonable compensation for the parcels being expropriated, the following facts should be considered: (1) that said lots are already valuable for and adapted to airfield purposes; (2) that plaintiff did not pay any rentals from July 4, 1946, when it began occupying the whole area; and (3) that many defendants-appellants have been rendered landless by these proceedings.

With respect to the first point, "the value of the land taken to the party taking it is not the test of what should be paid, nor should the fact that the land is desired or needed for a particular public use be considered when it is taken for that use. The necessities of the public or of the party seeking to condemn land cannot be taken into consideration in fixing the value." (18 Am. Jur., pp. 881–882). On the second point raised, aside from the fact that there is no evidence whatever to determine the reasonable rentals on the parcels in question, the indemnity for such rentals is inconsistent with defendants' right to be paid legal interest on the value of their properties from the time of their actual taking in 1946; for if plaintiff-appellant is to pay interest on the compensation due to the defendants from the time of the actual taking of their property, the payment of such compensation is deemed to retroact to the actual taking of the property; hence, there is no basis for defendants' claim for rentals from the time of actual taking to the filing of the complaint in court. Anent the last point, that many of the defendants-appellants have been rendered homeless and landless by these proceedings, it has been held that the inconvenience resulting from the

loss of a home, or its sentimental value to the owner, is not a proper element of damage. "If the loss be merely the cost of moving from one place to another, that is made up to the owner by the use of the money which the corporation must pay to him before he is required to move; and any other inconvenience of a more sentimental nature he is required to suffer for the public benifit." (Madisonville, H & E. R. Co. *vs.* Rose, 13 L. R. A. [n. s.] 420).

Wherefore, with the modification that lots Nos. 6613, 6612, 6609, 6604–A, 6606–A, 6610–A, 6611–A, 8445, and 6247–A should be classified and valued as "Group–A" agricultural lands, the judgement appealed from is, in all other respects, affirmed. Let the records of this case be remanded to the Court of origin for a revaluation of the aforementioned lots in accordance with this opinion. Without costs in this instance.

Parás, C. J., Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, and *Concepcion, JJ.*, concur.

Judgment affirmed with modification.

[No. L–5872. November 29, 1954]

ENRIQUE BERNARDO, ET AL., petitioners, *vs.* CRISOSTOMO S. BERNARDO and the COURT OF APPEALS., respondents

1. EMINENT DOMAIN; "BONA FIDE" OCCUPANT HAS PREFERENTIAL RIGHT TO BUY LANDS; MERE LICENSEE OF LESSEE IS NOT "BONA FIDE" OCCUPANT.—A person who, at the time of the acquisition of the estate by the Government, has been gratuitously occupying a lot therein by mere tolerance of its lessee, and who does not own the house erected on such lot, is not a "*bona fide* occupant", entitled to its acquisition, as the term is used in Commonwealth Act No. 539.
2. ID.; ID.; ID.; ESSENCE OF TERM "BONA FIDE".—The essence of *bona fide* or good faith, lies in honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another.

ORIGINAL ACTION in the Supreme Court. Certiorari.

The facts are stated in the opinion of the court.

Cornelio R. Magsarili for petitioners.
De los Santos & De los Santos for respondents.
Alfonso S. Borja, amicus curiae.

REYES, J. B. L., *J.:*

Enrique Bernardo, his wife and children, petition this Court for a review of the decision of the Court of Appeals (in its case No. 6677–R), declaring the respondent Crisostomo R. Bernardo entitled to preference under commonwealth Acts Nos. 20 and 539, in the acquisition of lot No. 462–A of the "Capellanía de Concepción", also known as lot No. 4, block No. 26, of the Tambobong Estate plan,

located in Malabon, Rizal, and having an area of 208 square meters.

It is uncontested fact that on December 31, 1947, the Republic of the Philippines purchased from the Roman Catholic Church the estate known as the "Capellanía de Tambobong" in Malabon, Rizal, under the provisions of section 1, of Commonwealth Act No. 539. Said Act authorizes the expropriation or purchase of private lands and that lands acquired thereunder should be subdivided into lots, for resale at reasonable prices to "there *bona fide* tenants or occupants". Crisostomo R. Bernardo, respondent herein, applied to the Rural Progress Administration for the purchase of the lot in question. Petitioners Enrique Bernardo, et al., contested the application and claimed preferential right to such purchase, and on January 12, 1948, the Rural Progress Administration resolved to recognize the petitioners as entitled to preference. The respondents then appealed to the Court of First Instance of Rizal, and the latter upheld their claim, and the decision was affirmed by the Court of Appeals.

The decision of the Court of Appeals expressly finds that:

"* * * It has been incontestably proven that the disputed lot had been held under lease by appellee's deceased parents and later by him (appelle) continuously from 1912 to 1947. The appellee's predecessors paid the rentals due on the said lot from the commencement of their leasehold rights up to 1936, when Teodora Santos died. The appellee continued paying the rents on the same lot from 1936 to December 31,1947, when the Government acquired the entire Capellani de Concepcion estate. Since 1912, the value of the leasehold right of appellee amounts to about ₱4,000.00.

The alleged preferential right of the appellants to the purchase of the disputed lot, which was also the main basis of the decision of the Rural Progress Administration, is their claim of actual occupation of the lot for many years before the acquisition of the Concepcion estate by the Government. The appellants' occupation of the premises is not denied by the appelee. Appellee's witness, Otilia Santos, however, said that the late Romulo Bernardo had allowed his uncle, appellant Enrique Bernardo, to stay in the premises since the year 1918. (Petitioner's Brief, pp. 72–73).

The Court of Appeals also found that the house standing on the lot had been since July 13, 1944, sold by petitioner Enrique Bernardo to the respondent, who thereby became its owner; that because of family relationship, the petitioners "were able to remain in the premises due to the tolerance of, and out of charity from, the appellee (respondent Crisostomo Bernardo) and his deceased parents who were the rightful lessees of the lot in question".

The Court of Appeals likewise found and declared in its decision that since February 1, 1945, the respondent Crisomtomo Bernardo required the petitioner to vacate the premises. Finally, we understand that in Case No. 6734–R, the Court of Appeals declared valid to sale of the house

on the lot in question made in 1944 by petitioner Enrique Bernardo in favor of respondent Crisostomo R. Bernardo, and that the aforesaid judgment is now final.

There are thus before us, disputing the right of preference to the acquisition of the lot, the respondent who is the owner of the house standing on said lot since 1944, and has held the land in lawful tenancy since 1912, paying rents and taxes thereon; and the petitioner who was allowed by respondent, out of deference and charity, to gratuitously occupy, the lot and live therein since 1918. Upon the facts on record, we are of the opinion that petition does not come under the description "bona fide tenant or occupant" employed in the statute (C. A. 539).

The term "bona fide occupant" (admittedly petitioner is not a tenant) has been defined as "one who supposes he has a good title and knows of no adverse claim" (Philips *vs.* Stroup 17 Att. 220, 221); "one who not only honestly supposes themself to be vested with true title but is ignorant a superior right to it" (Gresham *vs.* Ware, 79 Ala. 192, 199); definition that correspond closely to that of a possessor in good faith in our Civil Law (Civil Code of 1889, art. 433; new Civil Code, art. 526). The essence of the *bona fides* or good faith, therefore, lies in honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another. The petitioner Enrique Bernardo falls short of this standard: for the precarious nature of his occupancy, as mere licensee of respondents, duty bound to protect and restore that possession to its real and legitimate holders upon demand, could never be hidden from him. Moreover, at the time the Government acquired the Tambobong Estate, petitioner had already parted with the house that was his remaining link with the occupancy of the lot; and since 1945, even before the Government's purchase, he had been required to vacate. Thus bereft of all stable interest in the land, petitioner nevertheless seeks to turn respondent's past deferential regard to his own advantage, and to exploit his gratuitous stay at respondent's expense for the purpose of ousting his benefactors and wiping out the investment that the latter, and their predecessors in interest, had established and preserved by faithful payment for thirty years of the rental charged for the lot in question. That the law, in preferring "bona fide occupants", intended to protect or sanction such utter disregard of fair dealing may well be doubted.

The petitioner seeks to justify his stand by claiming that the policy of the government, ever since the start of the American sovereignty, had been to acquire the landed estates for the benefit of their "actual occupants", as allegedly exemplified in Acts 1170 and 1933 (Friar Lands' Acts), and Commonwealth Acts Nos. 20, 260, 378, and 539

(Homesite Acts); that the words "bona fide occupants" employed in the Commonwealth Acts are equivalent to "actual" occupants. Two powerful reasons nullify this contention. The first is that section 7 of Act 1170 of the old Philippine Legislature, employs the terms "actual bona fide settlers and occupants", plainly indicating that "actual" and "bona fide" are not synonymous, while the Commonwealth acts deleted the term "actual" and solely used the words "*bona fide* occupants", thereby emphasizing the requirement that the prospective beneficiaries of the acts should be endowed with legitimate tenure. The second reason is that in carrying out its social readjustment policies, the government could not simply law aside moral standards, and aim to favor usurpers, squatters, and intruders, unmindful of the lawful or unlawful origin and character of their occupancy. Such a policy would perpetuate conflicts instead of attaining their just solution. It is safe to say that the term "bona fide occupants" was not designed to cloak and protect violence, strategy, double dealing, or breach of trust.

That the underlying motive behind the homesite acts is the desire that "the heads of the families concerned be given opportunity to become the owners of their homes and residential lots in which they and their forbears have been raised and born" (Messages of the President, Vol. 4, p. 288–290), favors the respondents rather than the petitioner, for it is an inalterable fact on record that the rentals and taxes on the lot in question were always paid by the parents of respondent Crisostomo Bernardo and continued by the latter upon his parents' death, to the exclusion of herein respondent.

As pointed out by the decision under review, had not the respondents taken and maintained sincere and affirmative steps to own their lands through a continuos and faithful payment of their obligations, the chances are that the petitioner would have been long ago speedily ejected from the premises by the former landdowners. To which may be added that at present, not being the lessee of the fact, nor the owner of the house standard thereon, the petitioner's interest in this particular lot appears to be a purely speculative one.

We therefore rule that a person who, at the time of the acquisition of the Tambobong Estate by the Government, has been gratuitously occupaying a lot therein by mere tolerance of its lessee, and who does not own the house erected on such lot, is not a "bona fide occupant", entitled to its acquisition, as the term is used in Commonwealth Act No. 539. Whether or not the situation would be different if the occupant were a sublessee of the lot, need not be decided in this case, the issue not being involved.

Wherefore, the decision appealed from is affirmed, with costs against petitioner.

Bengzon, Padilla, Montemayor, A. Reyes, and *Jugo, JJ.,* concur.

BAUTISTA ANGELO, *J.:*

I concur with the majority solely because of the peculiar facts of this case; but I am of the opinion that, between a *bona fide* occupant and a tenant or lessee, the spirit of the law is to prefer the former especially if the latter has already a piece of land of his own.

PARAS, *C. J.,* with whom concurs PABLO, *J.,* dissenting:

On December 12, 1947, the herein respondent Crisostomo S. Bernardo filed an application with the Rural Progress Administration for the purchase of lot No. 462–A of the "Capellanía de Concepción", now lot No. 4, block No. 26, of the Tambobong Estate plan, situated in Concepcion, Malabon, Rizal, and containing an area of 208 square meters. The herein petitioners, Enrique Bernardo, his wife and children, also applied for the purchase of the same lot. The basis of both applications is Commonwealth Act No. 20, as amended by Commonwealth Act No. 539. In its decision dated January 12, 1948, the Rural Progress Administration awarded the lot to the petitioners, and on July 9, 1948 the corresponding deed was executed in their favor.

On July 26, 1948, respondent Bernardo filed an action in the Court of First Instance of Rizal against the petitioners and the Rural Progress Administration, praying that the decision of the Rural Progress Administration, as well as the corresponding sale in favor of the petitioners, be declared null and void; that respondent Bernardo be declared entitled to purchase the lot in question; that the petitioners be ordered to vacate the lot and surrender the possession thereof; and that the petitioners be sentenced to pay respondent Bernardo, by way of damages, the sum of ₱20.00 per month from February 1, 1945 until its surrender to said respondent. After hearing, the Court of First Instance of Rizal rendered on February 15, 1950 a decision in favor of respondent Bernardo, the dispositive part of which reads as follows:

"In view of the foregoing, the Court renders judgment in favor of the plaintiff and against the defendants, declaring the decision of the Rural Progress Administration dated January 12, 1948, as well as the sale of the lot in question by said Rural Progress Administration to defendants Bernardo null and void and of no effect; ordering said defendant Rural Progress Administration to sell the lot in question to the plaintiff who is the bona fide tenant of the lot in dispute and the owner of the house standing thereon; ordering the defendants Bernardo to vacate the lot in question and to pay to the plaintiff damages in the sum of ₱20.00 per month, representing the reasonable rental value for their illegal use and

occupation of said lot, from Febuary 1, 1945 until the said lot is vacated by defendant Bernardo; and sentencing all defendants to pay the costs of the suit."

From this decision the petitioners appealed to the Court of Appeals which, on April 17, 1952, affirmed the decision of the court of origin *in toto,* with costs against the petitioners. The latter have elevated the case before us on certiorari.

The facts relied upon by the Court of First Instance of Rizal and the Court of Appeals are to the effect that the deceased parents of the respondent Bernardo and later said respondent himself had been the lessee of the lot from 1912 to 1947; that respondent's predecessors paid its rental up to 1936 when his mother Teodora Santos died; that from 1936 respondent Bernardo in turn paid the rentals up to December 31, 1947, when the Government acquired the entire "Capellanía de Concepción" estate; that he owns the house standing on the lot; that while the petitioners actually occupied said lot since 1918, their occupancy was by mere tolerance of and out of charity from respondent Bernardo and his deceased parents; that the petitioners were required by respondent Bernardo to vacate the premises on February 1, 1945, or two years before the acquisition of the "Capellanía de Concepción" estate by the Government.

Upon the other hand, the petitioners' preferential right to acquire the lot is premised on their actual occupancy since 1918.

Commonwealth Act No. 20, enacted on July 11, 1936, in section 1, provided that "the President of the Philippines is hereby authorized to order the institution of expropriation preceedings or to enter into negotiations for the purpose of acquiring portions of large landed estates which are now used at home sites and reselling them at cost to their bona fide occupants." It will be noted that, under this provision, portions of large landed estates used as *homesites* would be expropriated or acquired by the Government for resale to their *bona fide occupants.* Commonwealth Act No. 539, enacted on May 26, 1940, and amending Commonwealth Act No. 20, provides that "the President of the Philippines is authorized to acquire private lands or any interest therein, through purchase or expropriation, and to subdivide the same into home lots or small farms for resale at reasonable prices and under such conditions as he may fix to their *bona fide* tenants or occupants or to private individuals who will work the lands themselves and who are qualified to acquire and own lands in the Philippines." This latter provision differs from Commonwealth Act No. 20 in the sense that private lands are to be acquired or expropriated for subdivision into lots or small farms for resale to their *bona fide* tenants or occupants or to private individuals who are qualified to acquire and own lands in

the Philippines, the important change being, for the purposes of this opinion, that resale now be made to "*bona fide* tenants or occupants."

The theory of the trial court and the Court of Appeals is that, as respondent Bernardo was admittedly the lessee of the lot in question, he should enjoy priority. It was reasoned out that said respondent having paid, by his predecessors and himself, the rentals for the land from 1912 to 1947, and owing the house now standing on the lot, is a "tenant" within the purview of Commonwealth Act No. 539; that the petitioners could not have stayed in the premises since 1918, without being ejected by the original owners of the "Capellanía de Concepción" estate, if respondent Bernardo and his predecessors had not paid said rentals.

We are of the opinion that the law in this case has been misapplied. To determine the real purpose of Commonwealth Act No. 20 and Commonwealth Act No. 539, we have only to recall that as early as April 26, 1904, Act No. 1120, otherwise known as the "Friar Lands Act", was approved, providing that the actual settlers and occupants of lands acquired by the Government had preference over all others to lease, purchase, or acquire their holdings. This was followed on July 11, 1936, by Commonwealth Act No. 20, authorizing the resale of *homesites* to their *bona fide* occupants. This trend was adopted in Commonwealth Act No. 260, approved on April 18, 1938, and Commonwealth Act No. 378, approved on August 23, 1938, which also expressly referred to *bona fide* occupants. The purpose of Act No. 1120, known as the "Friar Lands Act" had already been explained by this court in the case of Jocson *vs.* Soriano, 45 Phil, 375; 378–379, as follows:

"Acts 1120 and 926 were patterned after the laws granting homestead rights and special privileges under the laws of the United States and the various states of the Union. The statutes of the United States as well as of the various states of the Union contain provisions for the granting and protection of homesteads. Their object is to provide a home for each citizen of the Government, where his family may shelter and live beyond the reach of financial misfortune, and to inculcate in individuals those feelings of independence which are essential to the maintenance of free institutions. Furthermore, the state itself is concerned that the citizens shall not be divested of a means of support, and reduced to pauperism. (Cook and Burgwall *vs.* McChristian, 4 Cal., 24; Franklin *vs.* Coffee, 70 Am. Dec., 292; Richardson *vs.* Woodward, 104 Fed. Rep., 873; 21 Cyc., 459.)

"The conservation of a family home is the purpose of homestead laws. The policy of the state is to foster families as the factors of society, and thus promote general welfare. The sentiment of patriotism and independence, the spirit of free citizenship, the feeling of interest in public affairs, are cultivated and fostered more readily when the citizen lives permanently in his own home, with a sense of its protection and durability. (Wapples on Homestead and Exeptions, p. 3.)"

This objective is readily embedded in Commonwealth Act No. 20 which speak as *bona fide* occupants; and we cannot suppose that, presumably aware of legislative antecedents, our lawmakers ever intended to depart from such purpose in enacting Commonwealth Act No. 539. Indeed, the Rural Progress Administration in its resolution No. 32, dated August 7, 1949, (according to the petitioners, should be 1939) resolved "that it is the sense of this board that the words '*bona fide occupants,* as used in Commonwealth Act No. 20, as amended, applies to the person actually occupying any given lot, irrespective, of any former lease contract with the previous owners of the homisite." It is significant that this construction was given by the very agency called upon to implement the law. But the Court of Appeals argued that said resolution should be construed in connection with paragraph 3 of resolution No. 252, dated March 11, 1949, which reads in part as follows:

"Resolved, to adopt as tentative rules covering the dispostion of lot in the Tambobong Estate, Malabon, Rizal, the following:

"(1) To award to the lessees the lots under their possession if they have houses thereon and the area thereof does not exceed 1,000 square meters. The RPA, however, reserves the right to take away from said lessees any portion in excess of 1,000 square meters.

"(2) That lots with no houses even though surrounded by fence be declared vacant.

"(3) That sublessees who have been occupying lots for at least five years be considered as *bona fide* occupants and as such with preferential right to purchase said lots if they possess no other in the same estate."

The Court of Appeals was of the opinion that paragraph 3 of resolution No. 252 requires *bona fide* actual occupation on the part of the sublessee for at least five years prior to the acquisition by the Government of the lot to be resold; and as the petitioners were required by respondent Bernardo to vacate the premises on February 1, 1945, they could not be considered as having occupied the lot *bona fide* for at least five years prior to December 31, 1947 when the "Capellanía de Concepción" estate was purchased by the Government. This construction is untenable, since paragraph 3 of the resolution No. 252 does not say that the *bona fide* possession for five years should be counted in relation or prior to the date of acquisition by the Government. Said resolution, it may fairly be supposed, contemplates possession from the time the sublessee actually occupies. In the present case it is admitted that the petitioners have held possession since 1918.

In this connection it may not be amiss to make reference to Republic Act No. 1162 which, in its section 5, provides, among other things, that "from the approval of this Act, and until the expropriation herein provided, no ejectment proceedings shall be instituted or prosecuted against any tenant or occupant of any landed estates or haciendas herein

authorized to be expropriated if he pays his current rentals." Of course, said Act was approved in 1954, or after the purchase by the Government of the "Capellanía de Concepción" estate, but it is obvious therefrom that the policy of the Government is to protect the actual occupants as much as possible, with the view to enabling them to acquire homesites. By analogy, we may consider the efforts of respondent Bernardo to oust the petitioners in 1945 as being of no decisive consideration.

We are also inclined to the view that the term "tenant" was added by Commonwealth Act No. 539, not for the purpose of giving such tenant any preference over an occupant, but merely to expand the scope of the law by allowing resale to persons other than a *bona fide* occupant; and this is clear from the use of the alternative conjunction "or" between the words "tenant" and "occupants" in Commonwealth Act No. 539. If the intention were otherwise, the law would have expressly provided that the tenant and the occupant shall enjoy preference in the order in which they are enumerated. This was exactly done in Republic Act No. 1162 which provides, in its section 3, that "the landed estates or haciendas expropriated by virtue of this Act shall be subdivided into small lots, none of which shall exceed one hundred and fifty square meters in area, to be sold at cost to the tenants, or occupants of said lots, and to other individuals, *in the order mentioned.*" In essence and effect, Commonwealth Act No. 539 may be said to best a certain degree of discretion in the agency authorized to carry out the law, to determine who is better qualified and should be preferred to a given lot. In the case before us, the Rural Progress Administration, after proper investigation, awarded the lot to the petitioners and, in our opinion, this exercise of discretion and judgment should not be interfered with in the absence of gross abuse.

We are not ready to state that the Rural Progress Administration had abused its discretion, because the petitioners have lived on the lot since 1918 and they are conceded more indigent than respondent Bernardo, coupled with the fact that the latter allegedly owns another property as his homesite. It is immaterial whether the petitioners have occupied the lot in question by mere tolerance and out of charity of respondent Bernardo, since this would not detract from the *bona fide* character of petitioners' possession which is all that is required by the law. In our opinion, the petitioners have occupied the land with as much good faith as a sublessee actually paying rentals; so much so that the former owners of the land never attempted to oust them; and they cannot be charged with either ingratitude or unfair dealing and dishonesty towards respondent Bernardo, for they merely accepted the benefit intended to be conferred in Commonwealth Act No. 539.

The petitioners do not deny having been the subject of respondent's benevolence; and as to whether the latter is entitled to demand an accounting and to be paid for such benevolence is another question which he may ventilate.

The relation of the parties herein which naturally gave way to petitioners continued possession of the lot in question, and the manner the petitioners acquired said possession, are contained in the following passage from the brief for the defendant-appellant in CA–G. R. No. 6734–R, Crisostomo Bernardo *vs.* Enrique Bernardo, in which the ownership of the house standing on the lot was litigated and decided in favor of respondent Bernardo:

"The plaintiff-appellee Crisostomo S. Bernardo and the defendant-appellant Enrique Bernardo are blood relatives .It appears that the grandmother of the plaintiff-appellee, one by the name of either Aniceta or Severina Bernardo, is the sister of the defendant-appellant Enrique Bernardo. At one time, (the exact time could no longer be remembered) the parents of Aniceta or Severina Bernardo and Enrique Bernardo, occupied the lot subject of the land case. There was a time however, when their parents died, the grandmother of the plaintiff-appellee, together with his parents (plaintiff-appellee's) left the premises, while the defendant-appellant Enrique Bernardo was left behind on the said lot. As the years went on the defendant-appellant erected a new house on the lot the one now in question, and continued to live therein up to the present time with his children, who are the other defendants-appellants brief in the land case and the documents or exhibits therein mentioned, pages 3–5." Supra, pp. 4–5.)

At any rate, from a technical point of view, the term "tenant" as used in Commonwealth Act No. 539 may be considered as refering only to a lessee who is in actual possession, thereby preventing one with wealth from acquiring lots for business purposes. Suppose a lessee of 25 lots in a big hacienda sublets the same to 25 actual occupants. In case the Government should expropriate the hacienda for resale in lots to "tenants or occupants," can it be seriously contended that the lessee is to be preferred to the actual occupants? An affirmative answer will be revolting to our sense of proportion; and yet that is the effect of the majority decision.

"SEC. 27. *Necessity of Entry by Lessee.*—Upon the execution of a lease, naming a present term, the lessee has a right of entry and of possession, but it seems well settled that he is not a tenant until he enters. To create the relation of landlord and tenant, there must be an entry by the lessee under the lease, or a holding of the possession of the premises by the lessee that will be referable to the lease as his authority. There is also authority to the effect that a lessee does not have an estate until he enters, and that under the common law, no estate for years could be created by a lease or other common-law conveyance, without an actual entry made by the person to whom the land was granted. * * * (32 Am. Jur., p. 50.)

The fact that respondent Bernardo had allowed the petitioners to occupy the lot since 1918 is positive evidence that said respondent has no need thereof; and it cannot be

gainsaid that Commonwealth Acts Nos. 20 and 539 are obviously intended, as heretofore already noted, to provide the actual occupants with a piece of land which they may call their own. Certainly the Government would have no reason to worry about those who were or are already home and land owners, much less to encourage "absentee" lessess. Commonwealth Act No. 539 was conceived to solve a social problem, not merely as a direct or indirect means of allowing accumulation of land holdings. Indeed, in Republic Act No. 267, which authorizes municipalities to expropriate lands for resale in lots, preference being given to Filipino *bona fide* occupants and to Filipino veterans, their widows, and their children, the policy of the Government was more or less announced that "no such lot shall be sold to any person who already owns a residential lot, and any sale made to such person shall be void."

The petitioners have called attention to the fact that respondent Bernardo paid the rentals from July, 1940 to December 31, 1947, only on April 2, 1947, when steps were already being taken by the Government to acquire the Tambobong Estate for resale to tenants or occupants. This fact may not of course affect the status of respondent Bernardo as a lessee, but it in a way justifies further the finding of the Rural Progress Administration that the petitioners should be preferred in the resale of the lot in question.

Another circumstance that influenced the Court of Appeals in affirming the decision of the Court of First Instance of Rizal is that the house standing on the lot belongs to respondent Bernardo. Apart from the fact that said house assessed at ₱640, Philippine currency, was sold by the petitioners to respondent Bernardo in 1944 for ₱1,050 in Japanese military notes (or less than ₱100, Philippine currency) and the petitioners remained in possession, we do not think that respondent's ownership can affect the status of the petitioners as *bona fide* occupants for purposes of Commonwealth Act No. 539. The same considerations mentioned with respect to the possession of the land are applicable.

Accordingly, we vote to reverse the appealed judgment and to affirm the decision of the Rural Progress Administration dated January 21, 1948, and the sale of the land in question to the petitioners.

Judgment affirmed.

[No. L-6389. November 29, 1954]

PASTOR AMIGO and JUSTINO AMIGO, petitioners, *vs.* SERAFIN TEVES, respondent

1. AGENCY; POWER OF ATTORNEY; BROAD POWERS GRANTED TO AGENT CONSTRUED.—Where the power granted to the agent is so broad that it practically covers the celebration of any contract and

the conclusion of any covenant or stipulation, the agent can act in the same manner and with the same breadth and lattitude as the principal could concerning the property.

2. "PACTO DE RETRO" SALE; LEASE COVENANT; LEASE IS MODE OF DELIVERY BY "CONSTITUTUM POSSESSORIUM"; COVENANT IS GERMANE TO "PACTO DE RETRO" SALES.—The lease that a vendor *a retro* executes on the property may be considered as a means of delivery of tradition by *constitutum possessorium*. It may be said, therefore, that the covenant regarding the lease of the land sold is germane to the contract of sale with *pacto de retro*.

3. ID.; ID.; PENAL CLAUSE PROVIDING FOR AUTOMATIC TERMINATION OF PERIOD OF REDEMPTION IS NOT CONTRARY TO LAW, MORALS OR PUBLIC ORDER.—The lease covenant in question provided, among others, that in case of failure of the vendors-lessees to pay the rentals as agreed upon, the lease shall automatically terminate and the right of ownership of the vendee shall become absolute. Petitioners contend that the penal clause is null and void. *Held:* While the lease covenant may be onerous or may work hardship on the vendor because of its clause providing for the automatic termination of the period of redemption, however, the same is not contrary to law, morals, or public order, which may serve as basis for its nullification. Rather than obnoxious or oppressive, it is a clause common in a sale with *pacto de retro*, and as such it received the sanction of the courts.

4. ID.; PRICE IS USUALLY LESS THAN IN ABSOLUTE SALES.—In a contract of sale with *pacto de retro*, the price is usually less than in absolute sales for the reason that in a sale with *pacto de retro*, the vendor expects to re-acquire or redeem the property sold.

5. APPEALS; APPEAL BY CERTIORARI; FINDING OF COURT OF APPEALS ON QUESTIONS OF FACT, FINAL AND CONCLUSIVE.—The finding of the Court of Appeals on questions of fact is final and conclusive upon the Supreme Court.

APPEAL by certiorari from a decision of the Court of Appeals dated October 31, 1952.

The facts are stated in the opinion of the court.

Enrique Medina for petitioners.
Capistrano & Capistrano for respondent.

BAUTISTA ANGELO, *J.:*

This is a petition for review of a decision of the Court of Appeals modifying that of the court of origin in the sense that plaintiffs, now petitioners, should not be made to pay the sum of ₱100 as attorney's fees.

This petition stems from an action filed by petitioners in the Court of First Instance of Negros Oriental praying that judgement be rendered: (*a*) declaring that the contract entered into between Marcelino M. Amigo and Serafin Teves on October 30, 1938 is merely a contract of mortgage and not a sale with right to repurchase; (*b*) declaring that even if said contract be one of sale with right to repurchase, the offer to repurchase by the vendors was made within the period agreed upon; (*c*) condemning respondents to execute a deed of reconveyance; and (*d*) condemning respondents to restore the property to petitioners and to pay ₱2,500 as damages.

The important facts which need to be considered for purposes of this petition as found by the Court of Appeals may be briefly summarized as follows: On August 11, 1937, Macario Amigo and Anacleta Cagalitan executed in favor of their son, Marcelino Amigo, a power of attorney granting to the latter, among others, the power "to lease, let, bargain, transfer, convey and sell, remise, release, mortgage and hypothecate, part or any of the properties * * * upon such terms and conditons, and under such covenants as he shall think fit."

On October 30, 1938, Marcelino Amigo, in his capacity as attorney-in-fact, executed a deed of sale of a parcel of land for a price of ₱3,000 in favor of Serafin Teves stipulating therein that the vendors could repurchase the land within a period of 18 months from the date of the sale. In the same document, it was also stipulated that the vendors would remain in possession of the land as lessees for a period of 18 months subject to the following terms and conditions: (*a*) the lessees shall pay ₱180 as rent every six months from the date of the agreement; (*b*) the period of the lease shall terminate on April 30, 1940; (*c*) in case of litigation, the lessees shall pay ₱100 as attorney's fees; and (*d*) in case of failure to pay any rental as agreed upon, the lease shall automatically terminate and the right of ownership of vendee shall become absolute.

On July 20, 1939, the spouses Macario Amigo and Anacleta Cagalitan donated to their sons Justino Amigo and Pastor Amigo several parcels of land including their right to repurcahse the land in litigation. The deed of donation was made in a public instrument, was duly accepted by the donees, and was registered in the Office of the Register of Deeds.

The vendors-lessees paid the rental corresponding to the first six months, but not the rental for the subsequent semester, and so on January 8, 1940, Serafin Teves, the vendee-lessor, executed an "Affidavit of Consolidation of Title" in view of the failure of the lessees to pay the rentals as agreed upon, and registered said affidavit in the Office of the Register of Deds of Negros Oriental, who, on January 28, 1940, issued to Serafin Teves the corresponding transfer certificate of title over the land in question.

On March 9, 1940, Justino Amigo and Pastor Amigo, as donees of the right to repurchase the land in question, offered to repurchase the land from Serafin Teves by tendering to him the payment of the redemption price but the latter refused on the ground that the ownership had already been consolidated in him as purchaser *a retro*. Hence, on April 26, 1940, before the expiration of the 18-month period stipulated for the redemption of the land, the donees instituted the present action.

The issues posed by petitioners are: (1) The lease covenant contained in the deed of sale with *pacto de retro* executed by Marcelino Amigo as attorney-in-fact in favor of Serafin Teves is not germane to, nor within the purview of, the powers granted to said attorney-in-fact and, therefore, is *ultra vires* and null and void; (2) the penal clause stipulated in the lease covenant referring to the automatic termination of the period of redemption is null and void; and (3) petitioners should be allowed to repurchase the land on equitable grounds considering the great disproportion between the redemption price and the market value of the land on the date the period of redemption is supposed to expire.

Petitioners contend that, while the attorney-in-fact, Marcelino Amigo, had the power to execute a deed of sale with right to repurchase under the power of attorney granted to him, however, the covenant of lease contained in said deed whereby the vendors agreed to remain in possession of the land as lessees is not germane to said power of attorney and, therefore, Marcelino Amigo acted in excess of his powers as such attorney-in-fact. The Court of Appeals, therefore, committed an error in not declaring said covenant of lease *ultra vires* and null and void.

The Court of Appeals, after analyzing the extent and scope of the powers granted to Marcelino Amigo in the power of attorney executed in his favor by his principals, found that such powers are broad enough to justify the execution of any contract concerning the lands covered by the authority even if this be a contract of lease. The court even went further: even in the supposition that the power to take the land under lease is not included within the authority granted, petitioners cannot now impugn the validity of the lease covenant because such right devolves upon the principals, who are the only ones who can claim that their agent has exceeded the authority granted to him, and because said principals had tacitly ratified the act done by said agent.

We find no plausible reason to disturb this finding of the Court of Appeals. The same, in our opinion, is in consonance with the evidence presented and with the conclusions that should be drawn from said evidence. This can be shown from a mere examination of the power of attorney (Exhibit D.) A cursory reading thereof would at once reveal that the power granted to the agent is so broad that it practically covers the celebration of any contract and the conclusion of any covenant or stipulation. Thus, among the powers granted are : "to bargain, *contract, agree for,* purchase, receive, and keep lands, tenements hereditaments, and accept the seizing and possession of all lands," o "to lease, let, bargain, *transfer, convey and sell,* remise, release, mortgage and hypothecate * * * *upon such terms and conditions, and under such covenants*

as he shall think fit." (Underlining supplied). When the power of attorney says that the agent can enter into any contract concerning the land, or can sell the land under any term or condition and covenant he may think fit, it undoubtedly means that he can act in the same manner and with the same breadth and latitude as the principal could concerning the property. The fact that the agent has acted in accordance with the wish of his principals can be inferred from their attitude in donating to the herein petitioners the right to redeem the land under the terms and conditions appearing in the deed of sale executed by their agent.

On the other hand, we find nothing unusual in the lease covenant embodied in the deed of sale for such is common in contracts involving sales of land with *pacto de retro*. The lease that a vendor executes on the property may be considered as a means of delivery or tradition by *constitutum possessorium*. Where the vendor *a retro* continues to occupy the land as lessee, by fiction of law, the possession is deemed to be constituted in the vendee by virtue of this mode of tradition (10 Manresa, 4th ed. p. 124). We may say therefore that this covenant regarding the lease of the land sold is germane to the contract of sale with *pacto de retro*.

While the lease covenant may be onerous or may work hardship on the vendor because of its clause providing for the automatic termination of the period of redemption, however, the same is not contrary to law, morals, or public order, which may serve as basis for its nullification. Rather than obnoxious or oppressive, it is a clause common in a sale with *pacto de retro*, and as such it received the sanction of our courts. As an instance, we may cite the case of Vitug Dimatulac *vs.* Coronel, 40 Phil., 686, which, because of its direct bearing on our case, we will presently discuss.

In that case, Dimatulac sold a piece of land to Dolores Coronel for the sum of ₱9,000, reserving the privilege to repurchase within the period of 5 years. The contract contained a provision—"commonly found in contracts of this character"—converting the vendor into a lessee of the vendee at an agreed rental, payable annually in the months of January and February, and permitting the vendor to retain possession of the porperty as lessee until the time allowed for its repurchase. It was also stipulated that in the event the vendor should fail to pay the agreed rental for any year of the five, the right to repurchase would be lost in the ownership consolidated in the vendee. The vendor failed to perform this obligation.

and continued in arrears in the payment of rent for at least three years, and taking advantage of the clause by which the consolidation of the property was accelerated, the vendee impleaded the vendor in a civil action to compel

him to surrender the property. This case, however, was settled by a compromise by virtue of which the vendor agreed to place the property at the disposal of the vendee so that the latter may apply the products of the land to the payment of the rent. Later, the vendor offered to redeem the property under the contract of sale with *pacto de retro,* the period of redemption not having as yet expired. The vendee refused the offer on the ground that her title to the property had already been consolidated. This Court declared the lease covenant contained in the contract as *lawful,* although it found that the act of the vendee in taking possession of the land by way of compromise constituted a waiver of the penal provision relative to the acceleration of the period of redemption. On this point, the Court said:

"It is undeniable that the clause in the contract of sale with *pacto de retro* of June 30, 1911, providing for extinction of the right of the plaintiff to repurchase in case he should default in the payment of the rent for any year was lawful. The parties to a contract of this character may legitimately fix any period they please, not in excess of ten years, for the redemption of the property by the vendor; and no sufficient reason occurs to us why the determination of the right of redemption may not be made to depend upon the delinquency of the vendor-now become lessee-in the payment of the stipulated rent. The supreme court of Spain sustains the affirmative of this proposition (decision of January 18, 1900); and although such a provision, being of a penal nature, may involve hardship to the lessee, the consequences are not worse than such as follow from many other forms of agreement to which contracting parties may lawfully attach their signatures. Nevertheless, admitting the validity of such a provision, it is not to be expected that any court will be reluctant to relieve from its effects wherever this can be done consistently with established principles of law."

We have not failed to take notice of the Court's warning that "admitting the validity of such a provision, it is not to be expected that any court will be reluctant to relieve from its effects wherever this can be done consistently with established principles of law." We only wish that in this case, as in the Dimatulac case, a way may be found consistent with law whereby we would relieve the petitioners from the effects of the penal clause under consideration, but, to our regret, none we have found, for respondent has been alert and quick enough to assert his right by consolidating his ownership when the first chance to do so has presented itself. He has shown no vacillation, nor offered any compromise which we may deem as a waiver or a justification for forfeiting the privilege given him under the penal clause. The only alternative left is to enforce it as stipulated in the agreement.

Petitioners also contend that as the assessed value of the land in 1938, when the contract was celebrated, was ₱4,280, the selling price of ₱3,000 agreed upon is unconscionable and, therefore, the penal clause should be considered as not written, and petitioners should be allowed to exercise the

right to repurchase on equitable considerations. And in support of this contention, counsel presented evidence to show that the market price of the land in 1940, the year the period of redemption was supposed to expire, was fourteen times more than the money paid for it by respondent such that, if that should be taken as basis, the value of the land would be ₱43,004.50.

While this contention may have some basis when considered with reference to an absolute contract of sale, it loses weight when applied to a contract of sale, with *pacto de retro*, where the price is usually less than in absolute sale for the reason that in a sale with *pacto de retro*, the vendor expects to re-acquire or redeem the property sold. Another flaw we find is that all the evidence presented refers to sales which were executed in 1940 and 1941 and none was presented pertaining to 1938, or its neighborhood, when the contract in question was entered into. And the main reason we find for not entertaining this claim is that it involves a question of fact and as the Court of Appeals has found that the price paid for the land is not unreasonable as to justify the nullification of the sale, such finding, in an appeal by certiorari, is final and conclusive upon this Court.

Finding no error in the decision appealed from, the same is hereby affirmed, without pronouncement as to costs.

Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Jugo and *Concepcion, JJ.*, concur.

Judgment affirmed.

[No. L-6517. November 29, 1954]

E. E. ELSER, INC. and ATLANTIC MUTUAL INSURANCE COMPANY, petitioners, *vs.* COURT OF APPEALS, INTERNATIONAL HARVESTER COMPANY OF THE PHILIPPINES and ISTHMIAN STEAMSHIP COMPANY, respondents.

1. CARRIERS; PROVISIONS OF BILL OF LADING CONTRARY TO CARRIAGE OF GOODS BY SEA ACT ARE NULL AND VOID.—Clause 18 of the bill of lading in question provided that owner should not be liable for loss or damage of cargo unless written notice thereof was given to the carrier within 30 days after receipt of the goods. However, section 3 of the Carriage of Goods by Sea Act provides that even if a notice of loss or damage is not given as required, "that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods." Which of these two provisions should prevail? *Held:* Clause 18 must of necessity yield to the provisions of the Carriage of Goods by Sea Act in view of the proviso contained in the same Act which says: "Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods * * * or lessening such liability otherwise than as provided in this Act, shall be null and void and of no effect." (Section 3.) This means that a carrier cannot limit its liability in a manner contrary to what is provided for in said Act, and so clause 18 of the bill of lading must necessity be null and void.

2. ID.; ID.; WHEN CAN CARRIER BE DISCHARGED FROM LIABILITY FOR LOSS OR DAMAGE.—A carrier can only be discharged from liability in respect of loss or damage if the suit is not brought within one year after the delivery of the goods or the date when the goods should have been delivered.

3. ID.; CARRIAGE OF GOODS BY SEA ACT; EXCEPTION CONCERNING ITS APPLICABILITY; CASE AT BAR.—Granting *arguendo* that at the time the Carriage of Goods by Sea Act of 1936 was accepted and adopted by the Philippine Government, the Philippines was still a territory or possession of the United States and therefore the trade between the two countries was not a foreign trade, still said Act is applicable to the present case it appearing that the parties have expressly agreed to make and incorporate the provisions of said Act as an integral part of their contract of carriage. This is an exception to the rule regarding the applicability of said Act.

APPEAL by certiorari from a decision of the Court of Appeals dated December 29, 1952.

The facts are stated in the opinion of the court.

Gibbs & Chuidan for the petitioners.
J. A. Wolfson for the respondent carriers.

BAUTISTA ANGELO, *J.:*

This is a petition for review of a decision of the Court of Appeals which affirms that of the court of origin dismissing the complaint without pronouncement as to costs.

The facts, as found by the Court of Appeals, are:

"It appears that in the month of December, 1945 the goods specified in the Bill of Lading marked as Annex A, were shipped on the 'S.S. Sea Hydra', of Isthmian Steamship Company, from New York to Manila, and were received by the consignee 'Udharam Bazar & Co.', except one case of vanishing cream valued at P159.78. The goods were insured against damage or loss by the 'Atlantic Mutual Insurance Co.' 'Udharam Bazar and Co.' successively filed claim for the loss with the Manila Terminal Co. Inc., who denied having received the goods for custody, and the 'International Harvester Co. of the Philippines', as agent for the shipping company, who answered that the goods were landed and delivered to the Customs authorities. Finally, 'Udharam Bazar & Co.' claimed for indemnity of the loss from the insurer, 'Atlantic Mutual Insurance Co.', and was paid by the latter's agent 'E. E. Elser Inc.' the amount involved, that is, P159.78."

As may be noted, the Court of Appeals held that petitioners have already lost their right to press their claim against respondents because of their failure to serve notice thereof upon the carrier within 30 days after receipt of the notice of loss or damage as required by clause 18 of the bill of lading which was issued concerning the shipment of the merchandise which had allegedly disappeared. In this respect, the court said that, "appellants unwittingly admitted that they were late in claiming the indemnity for the loss of the case of the vanishing cream as their written claim was made on April 25, 1946, or more than 30 days after they had been fully aware of said loss," and because of this failure, the Court said, the action of petitioners should, and must, fall. Petitioners now con-

tend that this finding is erroneous in the light of the provisions of the Carriage of Goods by Sea Act of 1936, which apply to this case, the same having been made an integral part of the covenants agreed upon in the bill of lading.

There is merit in this contention. If this case were to be governed by clause 18 of the bill of lading regardless of the provisions of the Carriage of Goods by Sea Act of 1936, the conclusion reached by the Court of Appeals would indeed be correct, but in our opinion this Act cannot be ignored or disregarded in determining the equities of the parties it appearing that the same was made an integral part of the bill of lading by express stipulation. It should be noted, in this connection, that the Carriage of Goods by Sea Act of 1936 was accepted and adopted by our government by the enactment of Commonwealth Act No. 65 making said Act "applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade." And the pertinent provisions of the Carriage of Goods by Sea Act of 1936 are:

"6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery.

* * * * * * *

"In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, *That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.*" (Section 3; italics supplied)

It would therefore appear from the above that a carrier can only be discharged from liability in respect of loss or damage if the suit is not brought within one year after the delivery of the goods or the date when the goods should have been delivered, and that, even if a notice of loss or damage is not given as required, "that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods." In other words, regardless of whether the notice of loss or damage has been given, the shipper can still bring an action to recover said loss or damage within one year after the delivery of the goods, and, as we have stated above, this is contrary to the provisions of clause 18 of the bill of lading. The question that now rises is: Which of these two provisions should prevail? Is it that

contained in clause 18 of the bill of lading, or that appearing in the Carriage of Goods by Sea Act?

The answer is not difficult to surmise. That clause 18 must of necessity yields to the provisions of the Carriage of Goods by Sea Act in view of the proviso contained in the same Act which says: "Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods * * * or lessening such liability otherwise than as provided in this Act, shall be null and void and of no effect." (Section 3.) This means that a carrier cannot limit its liability in a manner contrary to what is provided for in said Act, and so clause 18 of the bill of lading must of necessity be null and void. This interpretation finds support in a number of cases recently decided by the American courts. Thus, in Balfour, Guthrie & Co., Ltd., et al. *vs.* American-West African Line, Inc. and American-West African Line, Inc. *vs.* Balfour, Guthrie & Co., Ltd., et al., 136 F. 2d. 320, wherein the bill of lading provided that the owner should not be liable for loss of cargo unless written notice thereof was given within 30 days after the goods should have been delivered and unless written claim therefor was given within six months after giving such written notice, the United States Circuit Court of Appeals, Second Circuit, in a decision promulgated on August 2, 1943, made the following ruling:

"But the Act, section 3(6), 46 U. S. A. section 1303 (6) provides that failure to give 'notice of loss or damage' shall not prejudice the right of the shipper to bring suit within one year after the date when the goods shoud have been delivered. To enforce a bill of lading provision conditioning a shipowner's liability upon the filing of written claim of loss, which, in turn, requires and depends upon the filing of a prior notice of loss, certainly would do violence to section 3(6). But further, as a like provision was apparently quite customary in bills of lading prior to the act, the reasonable implication of section 3(6) is that failure to file written claim of loss in no event may prejudice right of suit within a year of the scheduled date for cargo delivery. This is also to be concluded from section 3(8) 46 U. S. C. A. section 1303(8), that any clause in a bill of lading lessening the liability of the carrier otherwise than as provided in the Act shall be null and void. A similar provision in the British Carriage of Goods by Sea Act, 14 & 15 Geo. V. c. 22, has been interpreted to nullify any requirement of written claim as a condition to suit at any time. CF. Australian United Steam Navigation Co., Ltd., *vs.* Hunt, (1921) 2 A. C. 351; Conventry Sheppard & Co. *vs.* Larrinaga S. S. Co., 75 Ll. L. Rep. 256"[1]

But respondents contend that while the United States Carriage of Goods by Sea Act of 1936 was accepted and adopted by your government by virtue of Commonwealth Act No 65, however, said Act does not have any application to the present case because the shipment in question was made in December, 1945, and arrived in Manila in

[1] This ruling was reiterated in Mackay, et al. *vs.* United States, et al., 83 F. Supp. 14, October 29, 1948 and Givaudan Dolawanna *vs.* The Blijdondijk, 91 F. Supp. 663, June 8, 1950.

February, 1946 and at that time the Philippines was still a territory or possession of the United States and, therefore, it may be said that the trade then between the Philippines and the United States was not a "foreign trade". In other words, it is contended that the Carriage of Goods by Sea Act as adopted by our government is only applicable "to all contracts for the carriage of goods by sea to and from Philippine ports in *foreign trade,*" and, therefore, it does not apply to the shipment in question.

Granting *arguendo* that the Philippines was a territory or possession of the United States for the purposes of said Act and that the trade between the Philipppines and the United States before the advent of independence was not *foreign trade,* or can only be considered in a domestic sense, still we are of the opinion that the Carriage of Goods by Sea Act of 1936 may have application to the present case it appearing that the parties have expressly agreed to make and incorporate the provisions of said Act as integral part of their contract of carriage. This is an exception to the rule regarding the applicability of said Act. This is expressly recognized by section 13 of said Act which contains the following proviso:

"Nothing in this Act shall be held to apply to contracts for carriage of goods by sea between any port of the United States or its possessions, and any other port of the United States or its possessions: *Provided, however,* That any bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea between such ports, *containing an express statement that it shall be suject to the provisions of this Act, shall be sujected hereto as fully as if subject thereto by the express provisions of this Act.*" (Italics supplied.)

This is also recognized by the very authority cited by counsel for respondents, who, on this matter, has made the following comment:

"The Philippine Act of 1936 like the U. S. Act of 1936, applies *propio vigore* only to foreign commerce 'to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade.

"Prior to Philippine Independence on July 4, 1946, trade between the Philippines and other ports and places under the American Flag, was not, by any ordinary definition, foreign commerce. Hence, the U. S. and Philippine Acts did not apply to such trades, even though conducted under foreign bottoms and under foreign flag, *unleess the carrier expressly exercised the option given by section 13 of the U. S. Act to carry under the provisions of that Act.* The fact that the U. S. coastwise flag monopoly did not extend to the Philippine trade did not alter the fact that the U. S. Trade with the Islands is domestic." (Knaught, Ocean Bills of Lading, 1947 ed. p. 250) (Italics supplied.)

Having reached the foregoing conclusion, it would appear clear that the action of petitioners has not yet lapsed or prescribed, as erroneously held by the Court of Appeals, it appearing that the present action was brought within one year after the delivery of the shipment in question.

As regards the contention of respondents that petitioners have the burden of showing that the loss complained of did not take place after the goods left the possession or custody of the carrier because they failed to give notice of their loss or damage as required by law, which failure gives rise to the presumption that the goods were delivered as described in the bill of lading, suffice it to state that, according to the Court of Appeals, the required notice was given by the petitioners to the carrier or its agent on April 25, 1946. That notice is sufficient to overcome the above presumption within the meaning of the law.

Wherefore, the decision appealed from is reversed. Respondents, other than the Court of Appeals, are hereby sentenced to pay to the petitioners the sum of ₱159.78, with legal interest thereon from the date of the filing of the complaint, plus the costs of action.

Parás, C. J., Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Concepcion and *J. B. L. Reyes, JJ.*, concur.

Judgment reversed.

[No. L-6614. Noviembre 29, 1954]

BENITO AYSON, recurrente y apelante, *contra* REPÚBLICA DE FILIPINAS, recurrida y apelada

1. TERRENOS PÚBLICOS; HOMESTEADS; DEBE SEGUIRSE EL PROCEDIMIENTO PROVISTO POR EL ARTÍCULO 16 DE LA LEY NO. 141 DEL COMMONWEALTH ANTES DE QUE SE PUEDA CANCELAR UNA SOLICITUD DE HOMESTEAD.—El homesteader o sus herederos tienen derecho a ser notificados, según el artículo 16 de la Ley No. 141 del Commonwealth, de toda actuación sobre el lote solicitado. La investigación *ex parte* hecha por un Inspector de Terrenos a espaldas del solicitante o sus herederos contraviene la disposición expresa de dicha ley. La base sobre que descansa el requisito de previa notificación es el principio bien establecido de que nadie debe ser privado de sus derechos sin el debido proceso legal o sin ser antes oído. La Oficina de Terrenos debe proceder con mucha cautela en la cancelación de solicitudes de *homestead* por recomendación de los inspectores de terrenos que suelen oír solamente a los nuevos solicitantes, a espaldas de los antiguos.
2. ID.; ID.; LA CANCELACIÓN DE UNA SOLICITUD DE "HOMESTEAD" EN CONTRAVENCIÓN DEL ARTÍCULO 16 DE LA LEY NO. 141 DEL COMMONWEALTH ES NULA.—La cancelación de una solicitud de *homestead*, en contravención del artículo 16 de la Ley No. 141 del Commonwealth, es nula (Villegas *vs.* Roldan, 42 Off. Gaz., 2830), y el hecho de que no se haya apelado ante el Secretario de Agricultura y Recursos Naturales no convalida la orden.

APELACIÓN mediante certiorari contra una decisión de la Corte de Apelaciones de fecha 7 de marzo de 1953.

Los hechos aparecen relacionados en la opinión del Tribunal.

Sr. T. De Los Santos en representación del recurrente-apelante.

El Procurador General Sr. Juan R. Liwag y el *Procurador Sr. Antonio A. Torres* en representación del recurrido-apelado.

PABLO, *M.:*

Trátase de una apelación por medio de certiorari contra una decisión del Tribunal de Apelación. Los hechos probados según dicho Tribunal son:

"That the land in question is lot No. 4025 of the Expediente No. 6, Record 483, situated in Labuan, Zamboanga City, and described as follows—

> "Bounded on the North, by lot No. 4027; on the east by lot No. 4026; on the south by lots Nos. 4024 and 4023; and on the west, by the shore;

"That in said lot No. 4025, there exist improvements mainly consisting of fruit-bearing coconut trees which yield fruits estimated from 5 to 6 thousand every three months, and if converted into copra they would produce 300 to 320 kilos per thousand;

"That Lorenzo Ayzon, several years before 1924, had acquired by purchase from some Subanos small parcels of land in Labuan, Zamboanga City, with the improvements existing thereon;

"That those parcels of land were surveyed by the surveyors of the Government, resulting into lot No. 4025 mentioned above;

"That lot No. 4025 was applied for by Lorenzo Ayzon in the Bureau of Lands as homestead (Homestead Application No. 31690);

"That before the filing of the homestead application, Lorenzo Ayzon was already in possession and occupation of this lot, planting it to coconuts and other fruit-bearing trees;

"That in August, 1927, Lorenzo Ayzon transferred his rights and interests and participation over lot No. 4025 and its improvements in favor of his son, defendant Benito Ayzon, who in turn continued possession and occupation thereof, benefitting out of the existing improvements;

"That Benito Ayzon has been paying the real estate taxes for said lot No. 4025;

"That Benito Ayzon, after having acquired the land from Lorenzo Ayzon, solicited the same and its improvements in concept of a homestead from the Bureau of Lands, but this application has not been acted upon;

"That Benito Ayzon on September 2, 1941, had leased a portion of lot No. 4025 and its improvements to defendant Pura Enriquez (Exhibit "B") who since then occupied and worked on said portion up to the time when the Director of Lands thru his representative entered into possession and ordered Pura Enriquez to vacate said portion designated by letter "P" on Exhibit "A";

"That in Civil Case No. 56, the Municipal Court of Zamboanga by the American Forces, defendant Benito Ayzon again filed his homestead application with respect to Lot No. 4025 (Exhibit "E"), but said application also was not acted upon;

"That in Civil Case No. 56, the municipal Court of Zamboanga City rendered decision in favor of plaintiff Pura Enriquez (defendant in Civil Case No. 181) and against said decision the Director of Lands, as third party in Civil Case No. 56 appealed to the Court of First Instance;

"That the previous application of Lorenzo Ayzon had been cancelled by the Director of Lands by virtue of an order dated January 22, 1938, (Exhibits "F" and "I"), upon recommendation of the delegate inspector of public lands, Raymundo C. German (Exhibit "S");

"That the ground for cancellation was that after investigation it was proven that Lorenzo Ayzon was not directly interested in Lot No. 4025, but the same was occupied by one Lee Sah, a Chinese citizen, who was the one benefitting of the improvements with the consent of Lorenzo Ayzon.

"That in accordance with Paragraph 12 of the Homestead Application (Exhibit "E") filed by Benito Ayzon with the Bureau of Lands, improvements of said lot introduced by Lorenzo Ayzon and Benito Ayzon, one of the defendants in Civil Case No. 181, with all the rights of occupation were expressly renounced in favor of the Government by virtue of the cancellation by the Director of Lands in his order of March 15, 1937, and by his refusal to act upon the homestead application filed by Benito Ayzon (Exhibit "E") as impliedly inferred by the filing of the complaint in Civil Case No. 181."

El recurrente contiende que el Tribunal de Apelación incurrió en error (1) al no declarar que el Director de Terrenos abusó de su discreción al cancelar la solicitud de homestead sin notificar a la parte interesada; y (2) al declarar que el lote No. 4025 es del dominio público bajo la administración y control del Director de Terrenos.

La orden del Director de Terrenos de 22 de enero de 1938, ordenando a Lee Sah que vacase el lote, comienza así:

"On March 15, 1937, this office issued *ex-parte* an order in connection with the Homestead Application No. 31690 (E–17463) of Lorenzo Ayzon as follows:

> 'As, upon investigation, it has been found that Lorenzo Ayzon *is not the one directly interested in the land covered by his Homestead Application No. 31690 (E–17463), and that said land is actually occupied by another person, said application is hereby cancelled.*"

Con la cancelación de la solicitud, la Oficina de Terrenos puede privar al solicitante o a sus herederos de las mejoras hechas en el lote y, en efecto, por medio de la demanda presentada en la presente causa, se pide que se dicte sentencia condenando a los demandados a restituir la propiedad y la posesión del mismo.

El artículo 16 de la Ley del Commonwealth No. 141 dispone que "si en cualquiera época antes de la expiración del plazo que concede la ley para la presentación de la prueba definitiva se probare a satisfacción del Director de Terrenos, *previa notificación al solicitante* del *homestead,* que el terreno solicitado no está sujeto, con arreglo a la ley, a ser registrado como *homestead,* o que el solicitante ha cambiado su residencia, o que voluntariamente ha abandonado el terreno por más de seis meses consecutivos dentro de los años requeridos de residencia y de ocupación, o que *en alguna otra forma* ha faltado o dejado de cumplir las condiciones requeridas por esta Ley, el Director de Terrenos podrá cancelar la solicitud."

Lorenzo Ayzon o sus herederos tienen derecho a ser notificados, según este artículo, de toda actuación sobre el lote solicitado. La investigación ex-parte hecha por el Inspector de Terrenos a espaldas del solicitante Lorenzo o herederos contraviene la disposición expresa de dicha

ley. La base sobre que descansa el requisito de previa notificación es el principio bien establecido de que nadie debe ser privado de sus derechos sin el debido proceso legal o sin ser antes oído. La investigación irregularmente seguida por el Inspector indujo a error al Director de Terrenos. No es éste el primar caso en que por la indebida conducta de un inspector de terrenos se cuestiona la actuación del Director de la Oficina de Terrenos.

En García contra Carpio y otros, G. R. No. L–5105 (julio 27, 1953), se sostenía que el Director de Terrenos expidió título de homestead a favor de Carpio por maquinaciones de un inspector de terrenos, en vez de expedirse a favor del apelante García a quien se había adjudicado el lote, Farm lot No. 5356, Pls–62 por la National Land Settlement Administration en Mallig Plains, Isabela.

En Alejo y otros contra Court of Appeals, G. R. No. L–7394, (Res. enero 26, 1954), se contendía que se privó a los antíguos ocupantes de varias porciones de terreno situado en Bubo Pond, barrio San Fabian, Sto. Domingo, Nueva Ecija, cancelando la solicitud de homestead de aquéllos mediante falsos informes del inspector de terrenos para dar lugar a que otros nuevos solicitantes adquiriesen derecho sobre dichas porciones. Estos casos y otros varios que hemos tenido oportunidad de conocer socavan la confianza del público en la Oficina de Terrenos.

La Oficina de Terrenos debe proceder con mucha cautela en la cancelación de solicitudes de homestead por recomendación de los inspectores de terrenos que suelenoir solamente a los nuevos solicitantes, a espaldas de los antiguos. Las investigaciones ex-parte frustran los buenos propósitos de la Ley.

La cancelación de la solicitud de homestead de Lorenzo Ayzon, en contravención del artículo 16 de la Ley del Commonwealth No. 141, es nula (Villegas *vs.* Juez Roldan, 42 Off. Gaz., 2830), y el hecho de que no se haya apelado ante el Secretario de Agricultura y Recursos Naturales no convalida la orden. La solicitud No. 31690, por tanto, debe continuar su curso ordinario, y cualquier acción que la Oficina de Terrenos deseare tomar sobre la misma debe hacerse con notificación previa a los herederos de Lorenzo Ayzon. Declarada nula la orden de cancelación, La Oficina de Terrenos no tiene derecho a recobrar la propiedad y posesión del lote en lítigio, sino la obligación de resolver la solicitud de homestead de Lorenzo Ayzon, de acuerdo con las disposiciones de la ley citada.

Se declara nula y de ningún valor la orden de cancelación de la solicitud de homestead; se sobresee la demanda sin pronunciamiento sobre costas.

Parás, Pres., Bengzon, Padilla, Montemayor, Jugo, A. Reyes, Bautista Angelo, Concepcion, y *J. B. L. Reyes, MM.,* conformes.

Se sobresee la demanda.

ERRATA

(Vol. 50, Off. Gaz., No. 11, November 1954)

The following Errata after correcting read as follows:

1. In Case No. L–5572, PEDRO GUERRERO *vs.* SERAPION D. YÑIGO and the COURT OF APPEALS.

Page 5281—

Syllabus, par. 1, line 9—"upon" should be deleted.

in the mortgagees. *Held:* If the stipulation be construed

Syllabus, par. 2, line 5—"hte" should be "the".

FOR DAMAGES OR RESCISSION.—Although the mortgagor under-

Id., line 11—"mortgagee" should be "mortgagees"

and if there should be any action accruing to the mortgagees,

Page 5282—

Line 6—Comma after the figure "13" should be stricken off.

of the Court of Appeals dated 13 August 1951.

Line 7—"court" should be "Court".

The facts are stated in the opinion of the Court.

Page 5285—

Line 7—"the" should be stricken off.

clause is conclusive proof that it is a mortgage and not

Line 40—Footnote number after the figure "₱1,847.22" should be "3".

to secure the payment of ₱1,847.22 [3] in favor of the spouses

Last footnote number should be "3" instead of "1"

[1] This sum is a reduction of the several sums paid in Japanese

2. In Case No. L–6301, THE MUNICIPAL GOVERNMENT OF CALOOCAN, PROVINCE OF RIZAL, *vs.* CHUAN HUAT & CO., INC.

Page 5312—

Par. 4, line 7—"abolished" should be "abolish".

use. The expropriation in such case tends to abolish economic

Par. 5, line 6—"HEALTH" should be "health".

health, public peace and order, or other public advantage. What

Par. 5, line 7—"TO BE" should be "to be"

is proposed to be done is to take plaintiff's property, which for

3. In Cases Nos. L–3087 and L–3088, In re: Testate Estate of the deceased JOSÉ B. SUNTAY.

Page 5322—

Line after the syllabus, insert the word "First" after the preposition "of".

APPEAL from a decree of the Court of First Instance of

Next line, "court" should be "Court".

The facts are stated in the opinion of the Court.

Page 5355—

Line 13—"returned" should be "return".

to Atanacio Teodoro and return by the latter to the former

DECISIONS OF THE COURT OF APPEALS

[No. 12445-R. May 4, 1954]

ZACARIAS VALENCIA, ET AL., petitioners, *vs.* HONORABLE JUDGE GUSTAVO VICTORIANO, Judge of the Court of First Instance of Camarines Norte, ET AL., respondents.

1. PLEADING AND PRACTICE; MOTION FOR POSTPONEMENT, GRANTING OF, NOT PRESUMED.—Counsel have no reason to assume that the court would grant motions for postponement and that therefore they could afford to be absent at the trial; and they and their clients must suffer the consequences if the court, in their absence, deny the postponement and proceed with the hearing (Thomas *vs.* Gomez, G. R. No. 43105, September 19, 1934; Elizan, Sr. *vs.* Rodriguez-Miyahira, CA-G. R. No. 1948-R, April 12, 1949).

2. CERTIORARI; COURT'S ERROR OF FACT OR LAW IN THE EXERCISE OF ITS JURISDICTION CORRECTIBLE ONLY BY APPEAL; ERROR OF JURISDICTION DIFFERENT FROM ERROR OF JUDGMENT.—Errors in the application of the law and the appreciation of evidence committed by a court after it has acquired jurisdiction over a case, are correctible only by appeal. The writ of certiorari is intended to keep a lower court within the limits of its jurisdiction, and consequently, only questions of jurisdiction, inclusive of matters of grave abuse of discretion which are equivalent to lack of jurisdiction, may be raised. The distinction between errors of jurisdiction and errors of judgment have often been made; and errors of fact or law, which a court may commit in the exercise of its jurisdiction, are merely errors of judgment which should be reviewed by appeal. (Herrera *vs.* Barreto, et al., 25 Phil., 245; So Chu *vs.* Nepomuceno, 29 Phil., 208; Santos *vs.* Court of First Instance, 49 Phil., 398; Herreros *vs.* Toledo, 45 Off. Gaz., [Supp. to No. 9], 411).

3. ATTORNEY AND CLIENT; CLIENTS BOUND BY COUNSEL'S ACTS, EVEN BY HIS MISTAKES, IN PROCEDURAL TECHNIQUE; REMEDY OF PREJUDICED CLIENT.—Parties are bound by the acts, even by the mistakes, of their counsel in procedural technique, (Islas *vs.* Platon & Ona, 47 Phil., 162; Montes *vs.* CFI of Tayabas, 48 Phil., 640; U. S. *vs.* Umali, 15 Phil., 33); and if they had been prejudiced thereby, their only remedy is to recover damages from their counsel (Re Filart, 40 Phil., 205; Isaac *vs.* Mendoza, June 21, 1951, L-2820).

ORIGINAL action in the Court of Appeals.

The facts are stated in the opinion of the court.

Manuel T. Ferrer for petitioner.
Rosario B. Zaño-Sunga for respondents.

REYES, J. B. L., *Pres. J.*

This is a petition for the issuance of the writ of certiorari filed by petitioners Zacarias Valencia, et al., defendants in Civil Case No. 375 of the Court of First Instance of Camarines Norte, to annul and set aside the order of

said court dated February 6, 1954 denying the petitioners' motion for new trial.

The main action was commenced in the Court below by an amended complaint of plaintiffs Claro Leaño, et al., for the purpose of quieting title to a parcel of land in barrio San Agustin, municipality of Vinzons, Camarines Norte, and recovering the possession thereof from the defendants, plus damages and attorneys' fees. After the plaintiffs had closed their evidence and in the course of the testimony of the first witness for the defendants, it appeared that other persons not named in the complaint were also possessing the land in question; wherefore, the Court instructed the amendment of the complaint for the inclusion of all necessary parties, to avoid multiplicity of suits; and the complaint was accordingly re-amended (Annex A, Petition) and new answers filed thereto (Annexes B and C). The continuation of the trial was then set for October 12, 1953; but when this day came, counsel for the defendants moved for another postponement to October 26, 1953, and with the conformity of the plaintiffs, the hearing was transferred to October 26 (Exhibits 2 and 3, Answer). Again on October 24, 1953, defendants filed in Court a written motion for postponement, on the ground that counsel was leaving for Capalonga on the same day on an urgent mission of four days (Annexes D and E, Petition). It is alleged for the defendants that copy of this motion was mailed to the plaintiffs' counsel on October 21, 1953. When the case was called for hearing on October 26 and plaintiffs were informed of defendants' motion for another postponement, however, plaintiffs' counsel denied having received copy thereof, and vigorously objected to the further continuance of the case on the grounds (1) that defendants had promised that the case would be definitely heard on October 26; (2) that plaintiffs were never served with notice of the motion for postponement; and (3) that the ground for the motion was purely political and did not constitute a legal excuse for the postponement of the case (Exhibit 4, Answer). The lower Court found the objections of the plaintiff to a further postponement justified, and proceeded with the hearing. Plaintiffs manifested that they were resting their case by the adoption of all evidence previously presented under the former complaint, and prayed that the case be considered submitted for decision. The lower Court then called the defendants, and when none appeared, dictated an order in open court declaring that the case was already deemed submitted for decision (Annex E, Petition).

The following month, or on November 18, 1953, defendants moved for the setting aside of the Court's order of October 26, alleging that the present status of the case did not warrant its submission for decision because the

defendants had not yet presented their evidence (Annex F, Petition), which motion was denied (Annex N, Petition). On December 11, 1953, the Court below (through Judge Maximo Abaño) rendered a decision declaring the plaintiffs owners of the land in question, and requiring the defendants to deliver possession thereof to the plaintiffs and to pay the latter ₱1,250 unpaid rentals and ₱500 attorneys' fees, plus costs (Annex 1, Petition). Defendants, upon receipt of the decision, filed a motion for new trial (Annex J, Petition) which, again, was denied on February 6, 1954, this time by Judge Gustavo Victoriano, who had in the meanwhile replaced Judge Abaño (Annex L, Petition). Instead of perfecting an appeal from the decision of December 11, 1953, the defendants came to this Court on an original action for certiorari, complaining about the order of the respondent Judge Gustavo Victoriano denying their motion for new trial as allegedly issued in grave abuse of discretion, and asking that said order be annulled and set aside.

We find no merit in the petition. There are ample reasons for not issuing the certiorari prayed for and not disturbing the order of the Court below denying petitioners' motion for new trial.

In petitioners' motion for new trial (Annex J, Petition), it is pleaded that the failure of their counsel to appear in the hearing of October 26 was due to excusable negligence. This plea can not be sustained. It should be remembered that it was petitioners' counsel who asked that the hearing of the case be postponed to October 26, and gave the assurance that the case would be definitely heard on said date, for which reason the respondents agreed to the continuance. This is attested by the Court's calendar of the October 12th hearing (Exhibit 3, Answer), wherein petitioners' counsel wrote "definitely postponed for October 26, 1953," and affixed his signature thereto. This agreement to have the case definitely heard on October 26 notwithstanding, petitioners' counsel filed in Court another motion for postponement on October 24, 1953, just two days before the hearing on October 26; and although he now alleges that he sent a copy of this motion to respondents' counsel by registered mail on October 21, 1953, we are inclined to believe the vigorous denials of the latter that she did not receive copy of any such motion, because the original of the motion was filed in Court only on October 24, and furthermore, petitioners have not presented the registry receipt of the alleged mailing of the copy of the motion to the respondents. Worse still, the ground relied upon in petitioners' motion for postponement was vague and ambiguous, without stating why counsel had to leave for another town and without explaining the importance and urgency of the mission, when

he knew all the time that the trial had been reset at his own request. And on the day of the trial, petitioners' counsel did not even appear in Court, by himself or by any representative in his behalf, to argue the merits of his motion, recklessly relying on the generosity of the respondents and the liberality of the court that the postponement would be granted.

Under the above circumstances, it can not be said that the lower Court abused its discretion when it denied the motion for postponement and declared the case submitted for decision in the absence of the defendants and their counsel. Motions for postponement are addressed to the sound discretion of the court (Co Changjo *vs.* Roldan Sy-Changjo, 18 Phil., 405; Rabillo *vs.* Tionko and Egay, 43 Phil., 317; Phil., Guaranty *vs.* Belando, 53 Phil., 410), and this discretion would not be interferred with unless it has been clearly abused (Sarreal *vs.* Judge Tan & Samonte, 49 Off. Gaz. No. 2,499; Camacho *vs.* Liquette, 6 Phil., 50).

It was later alleged in petitioners' motion for new trial in the Court below that their counsel failed to appear in the hearing on October 26 because he had to attend political engagements in the town of Capalonga, as one of the campaign managers of the Nacionalista Party in the province of Camarines Norte during the November, 1953 elections. Certainly, the wheels of Justice can not stop because of the political engagement of petitioners' counsel. It is high time to state that purely political considerations should not be allowed to take procedure over the business of the courts and the speedy administration of justice therein.

Petitioners likewise argue that they were deprived of their opportunity to present their evidence in the Court below and hence were deprived of property without due process of law. Suffice it to say that "where a party is duly notified of the trial and fails to attend it without sufficient cause, he can not thereafter claim that he was deprived of his day in court" (Sandejas *vs.* Robles, 46 Off. Gaz., No. 1, 203; Siojo *vs.* Tecson, et al., G. R. L–2807, April 23, 1951). The Courts have repeatedly warned that counsel have no reason to assume that the court would grant motions for postponement and that therefore they could afford to be absent at the trial; and they and their clients must suffer the consequences if the court, in their absence, deny the postponement and proceed with the hearing (Thomas *vs.* Gomez, G. R. 43105, September 19, 1934; Elizan, Sr. *vs.* Rodriguez-Miyahira, C. A.–G. R. No. 1948–R, April 12, 1949).

In further support of the present petition for certiorari, petitioners allege that the decision rendered by Judge Maximo Abaño on December 11, 1953 (Annex 1, Petition) is not sustained by the law and by the evidence presented, both as to the finding of plaintiffs' ownership of the land

in question, and the award of damages and attorneys' fees. Unfortunately, errors in the application of the law and the appreciation of evidence, committed by a court after it had acquired jurisdiction over a case, are correctible only by appeal. The writ of certiorari is intended to keep a lower court within the limits of its jurisdiction, and consequently, only questions of jurisdiction, inclusive of matters of grave abuse of discretion which are equivalent to lack of juristion, may be raised. The distinction between errors of jurisdiction and errors of judgment have oft been made; and errors of fact or law, which a court may commit in the exercise of its jurisdiction, are merely errors of judgment which should be reviewed by appeal (Herrera *vs.* Barreto, et al., 25 Phil., 245; So Chu *vs.* Nepomuceno, 29 Phil., 208; Santos *vs.* Court of First Instance, 49 Phil., 398; Herreros *vs.* Toledo, 45 Off. Gaz., [Supp. to No. 9] 411).

Obviously, petitioners have lost their right to appeal, for the period for appeal from the decision rendered by the Court below has already expired. For this, petitioners have only their counsel to blame, and they cannot now be heard to complain that they have lost all other remedies under the law if this petition is not granted. Petitioners are bound by the acts, even by the mistakes, of their counsel in procedural technique (Islas *vs.* Platon & Ona, 47 Phil., 162; Montes *vs.* CFI of Tayabas, 48 Phil., 640; U. S. *vs.* Umali, 15 Phil., 33); and if they had been prejudiced thereby, their only remedy is to recover damages from their counsel (Re Filart, 40 Phil., 265; Isaac *vs.* Mendoza, June 21, 1951, L–2820). It is hoped that litigants will realize that the enormous backlog of cases clogging the court dockets can not be cleared unless litigants and counsel are strictly held accountable for their duty to cooperate with the judiciary in maintaining a speedy administration of Justice.

For the above reasons, the petition for certiorari is denied, with costs against petitioners Zacarias Valencia, et al.

Ocampo and *Pecson, JJ.*, concur.

Petition denied, with costs against petitioners.

[No. 8349–R. May 5, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* PEDRO QUIJANO, Jr., defendant and appellant

1. NEW TRIAL; LIMITED NEW TRIAL.—A trial court may, under the law, limit the scope of a new trial (Rule 37, section 6, Rules of Court), and when this is done, the parties are not permitted to transgress the limitations imposed.
2. CRIMINAL LAW; MITIGATING CIRCUMSTANCE OF PASSION AND OBFUSCATION; FEELING MUST NOT ORIGINATE FROM IMMORAL CAUSES. —In order that the circumstance of passion and obfuscation may be considered it is necessary that there be clear proof of the

existence of an act both unlawful and sufficient to produce such condition of the mind (U. S. *vs.* Pilares, 18 Phil., 87; U. S. *vs.* Sarikala, 37 Phil., 486). The feeling furthermore must originate from a legitimate cause and not from a vicious and immoral one (U. S. *vs.* Hicks, 14 Phil., 217).

3. ID.; MITIGATING CIRCUMSTANCE OF INCOMPLETE SELF-DEFENSE; REQUISITES.—The mitigating circumstance of incomplete self-defense may only be considered if there are clear and convincing evidence that the accused acted in defense of his life from an unlawful aggression, but that he either used irrational means to repel the aggression, or the aggression was provoked by him. There must be unlawful aggression, otherwise, this defense cannot be invoked. (People *vs.* Buenafe, 34 Off. Gaz., 2604).

APPEAL from a judgment of the Court of First Instance of Batangas. Soriano, *J.*

The facts are stated in the opinion of the court.

Edmundo M. Reyes for defendant and appellant.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Jose P. Alejandro* for plaintiff and appellee.

NATIVIDAD, *J.*,

This appeal has been brought to reverse a judgment of the Court of First Instance of Batangas, convicting the appellant of the crime of homicide and sentencing him to suffer the indeterminate penalty of from 10 years of *prisión mayor* to 12 years, 10 months and 21 days of *reclusión temporal,* with credit of one-half of the preventive imprisonment undergone by him, to indemnify the heirs of the deceased in the amount of ₱3,000, and to pay the costs.

It appears that the appellant, Pedro Quijano, Jr., was originally charged with the crime of murder. Upon arraignment, however, he was permitted to enter a plea of guilty to the lesser offense of homicide, and to present evidence to substantiate his claim that he was entitled to the benefits of the mitigating circumstances of non-habitual intoxication, voluntary surrender, passion or obfuscation and incomplete self-defense. The trial court, after hearing the evidence of the defense, found the appellant guilty of the crime of homicide, without the attendance of any circumstance modificative of criminal responsibility, either mitigating or aggravating, and sentenced him to the corresponding penalty. Three days after the promulgation of this judgment, the appellant filed a motion asking that he be granted a new trial and allowed to present newly discovered evidence, which, it was claimed, would establish all the mitigating circumstances invoke by him. The court, acting favorably on this motion, granted the appellant a new trial for the sole purpose of receiving additional evidence on the alleged mitigating circumstances of voluntary surrender. Without excepting to this order, the appellant submitted himself to the new trial held thereunder, and presented additional evidence in the course thereof.

Upon the evidence presented both in the original trial as well as in the new trial and the plea of guilty entered by the appellant, the trial court, setting aside its former judgment and giving the latter the benefit of the mitigating circumstance of voluntary surrender to the authorities, rendered the judgment herein appealed from.

The only issues raised by the appellant in this appeal are those set forth in his two assignments of error as follows:

"1. The trial court erred in not considering in favor of the appellant the mitigating circumstances of incomplete self-defense and that of passion and obfuscation.

"2. The trial court erred in the imposition of the penalty as provided for under the Indeterminate Sentence Law."

Appellant claims that besides that of voluntary surrender to the authorities, his evidence shows that the mitigating circumstances of passion or obfuscation and incomplete defense of self were present in the commission of the crime at bar, and, consequently, the trial court erred in not giving him the benefits of those circumstances, and in imposing upon him the penalty provided in the judgment appealed from. The Solicitor General submits that this claim is unmaintainable, for the new trial granted the appellant was only for the purpose of receiving evidence on the point whether of not the mitigating circumstance of voluntary surrender to the authorities was present in the commission of the crime at bar, and he did not object to that limitation but acquiesced in it.

We are of the opinion that appellant's contention is unfounded. Our conclusion, however, is not based on the reason adduced by the Solicitor General, for while a trial court may, under the law, limit the scope of a new trial (Rule 37, section 6, Rules of Court), and when this is done, the parties are not permitted to transgress the limitations imposed, nevertheless this rule is not applicable to the instant case. The order for a new trial entered in this case, although limited to the reception of evidence on the alleged existence of the mitigating circumstance of voluntary surrender to the authorities, nevertheless provided that the evidence already of record should stand, and the evidence presented in the original hearing covers all the mitigating circumstances invoked by the appellant. Our view is based on the fact that the evidence on record does not clearly establish the presence of such circumstances in the commission of the crime at bar. The only evidence pertinent to the point is the testimony of the appellant, given at the original hearing of the case, and the affidavits subscribed by one Juanito Eguia (Exhibits E and C). The pertinent part of the testimony of the appellant is as follows:

"Q. On the 8th day of March, 1951, at around 9 o'clock in the morning, did you meet the deceased Flordeliza Cielo?—A. Yes, sir, because I was looking for her.

"Q. Why were you looking for her?—A. Because she was not in our house.

"Q. What was your purpose in looking for her?—A. In order to send her home.

"Q. Where did you meet Flordeliza Cielo on that date?—A. In the street, near the market.

"Q. When you met her, what did you do?—A. I requested her to go home.

"Q. What was her answer to you?—A. She became mad at me and she made scenes.

"Q. When she was making scenes in a public place, what did you do?—A. I requested her to go home but she instead opened her knife.

"Q. What did she do with that knife?—A. She stabbed me but it did not hit me.

"Q. After she attempted to stab you with a knife, what did you do?—A. I became obfuscated and what I did was to hold my fire-arm.

"Q. During that time, do you know if you have taken any liquor?—A. During that time I had drunk wine.

"Q. After the attempt on your life, what did you do?—A. I do not know what I did because I was obfuscated.

"Q. Do you know that you have killed Flordeliza Cielo?—A. Yes, sir.

"Q. What happened to her?—A. She died."

(p. 11 to 12, t. s. n.)

And Juanito Eguia stated in his statement Exhibit E, which is in the national language, the following:

"Q. Ano ang ginagawa nila ng kaunaunahan mong makita?—A. Noon makita ko po ay binabatak na sa kamay si Flordelisa Cielo ni Pedro Quijano, Jr.

"Q. Ano pa ang ginagawa nila ng makita mo bukod sa hinihila ang kamay?—A. Noon mahila na sa kamay ay umaklis si Flordelisa at pagkaaklis ay bumunot ng baril si Pedro Quijano at bago nag-paputok. Nakita ko pong bumalik si Flordelisa na taas ang kamay na punta sa kanyang ina. Noon makita ko pong gayon ay pinaputukan ng pinaputukan ni Pedro Quijano, Jr. si Flordelisa Cielo, at tinamaan sa bisig at sa tiyan.

"Q. Ipaliwanag mo kung ano ibig mong sabihin ng salitang umaklis?—A. Ang ibig ko pong sabihin noon ay talagang aayaw sumama si Flordelisa Cielo kay Pedro Quijano, Jr. at nagaalpas.

"Q. Papaano ang pagkakahawak ni Pedro Quijano kay Flordelisa ng si Flordelisa ay nagaalpas kay Pedro?—A. Tangan po sa kamay na gustong isakay sa jeep.

"Q. Gaanong katagal na tangan ni Pedro Quijano si Flordelisa at gaanong katagal na nagaaklis?—A. Manga isa pong minuto, humigit kumulang.

"Q. Noon primerong barilin ni Pedro Quijano, Jr. si Flordelisa saan tinamaan si Flordelisa kung nakikita mo?—A. Sa palagay ko po ay sa bisig."

And in Exhibit C, which is also in the national language, the following:

"Q. Ang ibig kong liwanagin sa iyo ay ito: Naglaban baga si Flor at si Pedro bago binaril ni Pedro si Flor?—A. Opo at nakita kong si Flor ay nag-aaklisan.

"Q. Gaano katagal nakita mong sila ay nagaaway na si Flor ay nag-aaklisan sa pagkakahawak ni Pedro?—A. Mga pito pong minuto.

"Q. At pagkatapos ng panahong iyon ay saka pa binunot ni Pedro Quijano ang baril at binaril si Flor?—A. Opo.

It will be noted from a reading of the above-quoted statements that all that they disclose are that the appellant and the deceased lived as husband and wife without the benefit of marriage; that the deceased left on March 8, 1951, their common home without the knowledge of the appellant; that the appellant looked for the deceased and met her at about 9:00 o'clock in the morning of that day near the market of San Juan, Batangas; that the appellant requested the deceased to go home, but the latter refused; that thereupon the appellant held the deceased by the hands and made an attempt to embark her in a jeep, but the latter persisted in her refusal and made efforts to extricate herself from the hold of the appellant; that because of this attitude of the deceased the appellant drew a revolver and shot her; and that as a consequence of that shot the deceased died. The claim that the deceased drew a knife and with it attempted to stab the appellant cannot be believed. Juanito Eguia made no mention whatsoever of the existence of such knife, much less that the deceased attempted to stab the appellant with it. And Vicente Garcia, brother-in-law of the deceased, stated that the knife produced in the trial of this case (Exhibit F) did not belong to the latter (p. 5–6, t. s. n.)

Upon such facts, we do not see how the mitigating circumstance of passion or obfuscation could be considered as present in the commission of the crime at bar. In order that this circumstance may be considered it is necessary that there be clear proof of the existence of an act both unlawful and sufficient to produce such condition of the mind (U. S. *vs.* Pilares, 18 Phil., 87; U. S. *vs.* Sarikala, 37 Phil., 486). The feeling furthermore must originate from a legitimate cause and not from a vicious and immoral one (U. S. *vs.* Hicks, 14 Phil., 217). The act of the deceased in refusing to go home with the appellant, while provocative, nevertheless was insufficient to produce such passion or obfuscation in the latter as would entitle him to the benefits of that mitigating circumstance. Not being a legitimate husband of the deceased, the appellant had no legitimate right to compel her to go with him. The deceased was acting within her rights. The obfuscation which the appellant alleged possessed him, granting that he in fact had that feeling, did not originate from a legitimate cause. We, likewise find no ground for considering the presence in the commission of the crime at bar of the privileged mitigating circumstance of incomplete defense of self. This mitigating circumstance may only be considered if there are clear and convincing evidence that the accused acted in defense of his life from an unlawful aggression, but that he either used irrational means to repel the aggression, or the aggression was provoked by him. There must be unlawful aggression, otherwise this defense cannot be invoked. (People *vs.* Buenafe, 34 Off. Gaz., 2604).

In the instant case, there is no evidence that the deceased unlawfully attempted against the life of the deceased. As already stated appellant's uncorroborated statement that the deceased drew a knife and attempted to stab him with it cannot be believed. It is, in our opinion, a fabricated story. It was the appellant who unlawfully attacked the deceased. The appellant, therefore, was not the victim of any unlawful aggression and his life was never in danger during the argument he had with the deceased.

For the foregoing, we hold that the trial court's finding that the appellant is guilty as principal of the crime of homicide, with the attendance of the mitigating circumstance of voluntary surrender only, is in accordance with law and the evidence, and that the penalty imposed upon him is within the legal range. The judgment appealed from is, therefore, hereby affirmed, with the costs taxed against the appellant.

It is so ordered.

Paredes and *De Leon, JJ.*, concur.

Judgment affirmed.

[No. 10448—R. May 5, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* JOVENCIO NATIVIDAD, defendant and appellant

1. CRIMINAL LAW; EVIDENCE; WITNESSES; INTERESTED WITNESSES, ADMISSIBILITY OF THEIR TESTIMONY.—The testimony of interested witness should be subjected to careful scrutiny but they should not be rejected on the ground of bias alone. (U. S. *vs.* Mante, 27 Phil., 134; People *vs.* Pagaduan, 37 Phil., 90). Such testimony must judged on their own merits. If they are clear and convincing and are not destroyed by other evidence of record, they may be believed.
2. ID.; ID.; ID.; "EX-PARTE" AFFIDAVIT, GENERALLY INCOMPLETE.—Although there is some discrepancy between the statements of the son of the deceased on the witness stand and the contents of his sworn statement, in that in the latter he did not state that his father, the deceased, was stabbed by the appellant from behind, such fault, which is generally found on documents of this nature, is not sufficient to discredit the person subscribing the same. As has been said by an eminent author, "*ex-parte* affidavits are generally incomplete, often for want of suggestion and inquiries." (2 Moore on Facts, sec. 938).
3. ID.; ID.; SELF-DEFENSE; BURDEN OF PROOF.—It is well settled that self-defense, to be effective, must be proved by clear and convincing evidence, and the burden of proof lies with the party claiming it. (People *vs.* Ansoyon, 75 Phil., 772; People *vs.* Berio, 59 Phil., 533; People *vs.* Apolinario, 58 Phil., 586; People *vs.* Gimena, 59, Phil., 509; People *vs.* Jorge, 71 Phil., 451.)

APPEAL from a judgment of the Court of First Instance of Baguio. Concepcion, *J.*

The facts are stated in the opinion of the court.

Leoncio Belisario for defendant and appellant.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Florencio Villamor* for plaintiff and appellee.

NATIVIDAD, *J.:*

This appeal has been brought to reverse a judgement of the Court of First Instance of Baguio, convicting the appellant of the crime of murder and sentencing him to the indeterminate penalty of from 10 years and 1 day of *prisión mayor* to 17 years, 4 months and 1 day of *reclusión temporal*, with the accessories of the law, to indemnify the offended party in the sum of ₱4,000, and to pay the costs.

The evidence shows that the appellant, Jovencio Natividad, and the deceased, Lee Hok, were both ice cream peddlers in the City of Baguio. At about 7:00 o'clock in the morning of February 3, 1952, while the appellant and the deceased were in the ice cream depot in the market place of that city preparing ice cream, they had an argument about a pail of water wherein the appellant had washed his hand, which each claimed to be his. The deceased, who claimed that the water had been fetched by his son, angered by the appellant's acts in washing his hands therein, seized the pail and splashed its contents on the cement floor of the depot, bespaterring appellant's shirt and trousers. Incensed, the appellant uttered against the deceased insulting words in the local dialect. The latter did not mind the insult and continued attending to his work. A few minutes thereafter, while the deceased was in a squatting position pounding ice inside a freezer, the appellant drew a double-blade knife from his pocket (Exhibit B), and approaching the deceased from behind, suddenly stabbed the latter twice on the back with it. Thus assaulted, the deceased stood up to face his assailant. As he turned around, however, the appellant gave him another blow with his knife, which hit him on the left side of the neck. Armindo Lee, a 16 year old son of the deceased, upon seeing his father attacked by the appellant, grabbed a piece of wood (Exhibit D) and with it struck the latter on the right hand. This blow caused the appellant to drop the knife. Thus disarmed, the appellant fled. Armindo Lee chased the appellant, but as he could not catch him he returned to the depot, where he found his father lying on the ground, face upward, already dead. An autopsy was performed on the dead body of the deceased, and the physician who conducted the autopsy found in his body four wounds, one on the left tempore-frontal region, one in the mid-axillary region of the chest, one on the left lateral region of the neck, and another in the medial 7th intercostal space, which lacerated the lower lobe of the lung thru and thru and several veins and arteries in that region. Lee Hok died instantaneously of hemorrhage and shock secondary to these injuries.

The defense admits that the deceased Lee Hok died as a consequence of the injuries inflicted on him by the appellant; but contends that the latter, in inflicting such in-

juries, acted in self-defense. It is claimed that when the appellant uttered against the deceased certain insulting words in the Ilocano dialect, the latter immediately grabbed the piece of wood Exhibit D and dealt the former a blow with it; that this blow hit the appellant on the elbow of his right arm; that as the deceased was about to strike the appellant again with that club, the latter, to defend himself, drew a dagger from his hip pocket, embraced the deceased and stabbed him three times with said dagger on the back; that after having these blows, the appellant and the deceased grappled with each other; that in the course of this struggle, as the deceased made efforts to extricate himself from appellant's embrace, the latter gave the former another blow with the dagger on the left side of the neck, as a consequence of which he fell on the floor of the ice cream depot; and that after this last blow the appellant ran away to surrender to the authorities.

The main question, therefore, for determination in this appeal is whether the facts of this case are as testified to by the witnesses for the prosecution and found by the trial court, or they are as testified to by the appellant. In the first case, the judgment appealed from should be sustained, for the evidence of the prosecution above, beyond reasonable doubt, appellant's guilt of the crime at bar and the penalty meted to him is within the legal range; in the second, it should be revoked, for under the facts disclosed by the evidence of the appellant the latter is entitled to the benefits of the justifying circumstances of self-defense.

After a careful study of the evidence, we are fully persuaded that the facts of this case are as testified to by the witnesses for the prosecution and found by the trial court. The theory of the prosecution and that of the defense are diametrically opposed and the evidence supporting each are absolutely conflicting. The question, therefore, is reduced to one of credibility of contending witnesses. The trial judge, who for obvious reasons is in a better position than us to graduate the credibility of witnesses testifying before him, gave credence to the witnesses for the prosecution and found that the facts of this case are as testified to by them. We find no reason for disturbing such finding. The testimony of the witnesses Armindo Lee, Bernardo Catungal and Calixto Lagasca, upon which the findings of facts made by the trial court are predicated, appear natural, clear and convincing, and there is every reason to believe that they told the truth. These witnesses were present in the same room in which the crime was committed, and while Armindo Lee was a son of the deceased and Bernardo Catungal was boarding with the latter, we see no reason for discrediting them. The testimony of

interested witnesses should be subjected to careful scrutiny, but they should not be rejected on the ground of bias alone. (U. S. *vs.* Mante, 27 Phil., 134; People *vs.* Pagaduan 37 Phil., 90). Such testimony must be judge on their own merits. If they are clear and convincing and are not destroyed by other evidence of record, they may be believe. And the testimony of these witnesses fulfill the requirement. It is true that there is some discrepancy between the statements of the son of the deceased, Armindo Lee on the witness stand and the contents of his sworn statements (Exhibit I), in that in the latter he did not state that his father, the deceased, was stabbed by the appellant from behind. Such fault, however, are generally found on documents of this nature, and are not sufficient to discredit the person subscribing the same. As has been said by an eminent author, "*ex parte* affidavits are generally incomplete, often for want of suggestion and inquiries." (2 Moore on Facts, Sec. 938.) The claim that Calixto Lagasca was not an eye witness to the crime does not impress us. The fact that this witness was a market sweeper does not necessarily preclude the possibility that at the time the crime was committed he was inside the ice cream depot; or, at least, he was at a place in the market from which the scene of the crime was visible. So much may also be said as regards appellant's claim that his theory is supported by the direction of the wounds found in the body of the deceased. Dr. Reyes, the physician who conducted the autopsy, stated that the stab wounds found on the back of the deceased have been inflicted from behind, for, had the wounds been inflicted while the deceased was facing his assailant, such wounds would not have taken the direction of downward and inward from the outside. We find this expert opinion, which has not been contradicted, sound and logical. On the other hand, we find incredible the testimony of the appellant, upon which his theory of self-defense is solely predicated. Aside from the fact that it is not corroborated by any other evidence of record, the same is fraught with incongruences. If, as claimed, after the appellant had uttered against the deceased insulting words in the Ilocano dialect the latter picked up a piece of wood and with it immediately dealt a blow on the appellant, it is strange that the latter did not make any move to evade the blow. It is also strange that the blow landed on the right elbow of the appellant, considering that the offended party is right handed and they were facing each other. And it is stranger still that, notwithstanding that there were several people inside the depot at the time the crime was committed, not even one of them was placed on the witness stand to corroborate appellant's statement.

Upon the facts of record, therefore, we find absolutely untenable appellant's contention that, in inflicting upon the deceased the injuries that caused the latter's death, he acted in self-defense. It is well-settled that this self-defense, to be effective, must be proved by clear and convincing evidence, and the burden of proof lies with the party claiming it. (People *vs.* Ansoyon, 75 Phil., 772; People *vs.* Berio, 59 Phil., 533; People *vs.* Apolinario, 58 Phil., 586; People *vs.* Gimena, 59 Phil., 509; People *vs.* Jorge, 71 Phil., 451.) In the instant case, as already stated, the evidence does not meet the test.

For the foregoing, we find that the judgment appealed from is in accordance with law and supported by the evidence. The acts committed by the appellant clearly constitute the crime of murder qualified by treachery and the penalty meted to him is within the legal range. When the attack is made with a deadly weapon upon an unarmed person under conditions which made it impossible for the victim to flee or to make a defense before the fatal blow is dealt, the death of such person constitute murder qualified by treachery (People *vs.* Pengson, 44 Phil., 224). We agree, however, with the Solicitor General that the award of indemnity to the heirs of the deceased should be eliminated from the judgment appealed from, because the trial court reserved to such heirs the right to file a separate civil action for the recovery of the damages resulting from the crime.

Wherefore, modified as indicated above, the judgment appealed from is hereby affirmed in all other respects, with the cost taxed against the appellant.

It is so ordered.

Paredes and *De Leon, JJ.*, concur.

Judgment modified.

[No. 9583–R. May 6, 1954]

DOMINGO MABUTAS, plaintiff and appellant, *vs.* CALAPAN ELECTRIC COMPANY, defendant and appellant

DAMAGES; MORAL DAMAGES; MORAL DAMAGES BASED ON EQUITY; ARTICLE 21, CIVIL CODE CONSTRUED.—The right to moral damages is based on equity, and the principle is well known that he who comes to court in demand of equity must come with clean hands. Article 21 of the Civil Code must necessarily be construed as granting the right to recover damages only to injured persons who are not themselves at fault.

APPEAL from a judgment of the Court of First Instance of Oriental Mindoro. Abaño, *J.*

The facts are stated in the opinion of the court.

Alberto M. K. Jamir and *Saño & Ona* for plaintiff and appellant.

R. A. Cruz & R. G. Umali for defendant and appellant.

DIZON, *J.:*

In the month of August, 1950 Calapan Electric Co., hereinafter to be referred to as the company, was furnishing electric current to the residents of Calapan, Oriental Mindoro, by virtue of its franchise, one of its customers being Domingo Mabutas, a senior stenographer employed in the Court of First Instance of said province. A little before 2:00 o'clock p.m., on the 17th of said month Terezo Maderaso, an employee of the company, disconnected the lighting facilities of Domingo Mabutas, Luis Gaila and Enrique Valencia, by order of the manager, because of their failure to pay their July bills at noon on that date, but the lines for Gaila and Valencia were reconnected some three hours later after they had paid their respective accounts. At 8:00 o'clock that evening Mabutas went to the office of the company and settled his unpaid bill in the sum of ₱7.35. After doing so he requested the manager to have his line reconnected that same night because he needed the light very badly for the following reasons: his wife was on the family way and might give birth at any time; one of his children was sick; he had a guest in the house and had to transcribe some stenographic notes required by the Court of Appeals. The reconnection, however, was made only the following day and because of this Mabutas brooded the whole night and was ridiculed by his officemates when he reported to the office the following day.

The evidence also discloses that it was the practice of the company to make the 15th of every month the deadline for the payment of bills for electric consumption during the preceding month, this date having been subsequently moved farther to the 17th, and inasmuch as the company had no collectors, its customers had to go to its offices to pay their bills. All bills, as a rule, carried the following notice "YOUR LIGHT WILL BE DISCONNECTED IF YOU DO NOT PAY YOUR BILL BY 12:00 NOON ON THE 17TH OF THIS MONTH" but the one sent to Mabutas for July, 1950 (Exhibit E) did not bear such notice.

Upon the above facts the trial court found that the company had violated the rules and regulations promulgated by the Public Service Commission, particularly Section 97 thereof, (Exhibit H–1) as a result of which Mabutas "suffered wounded feeling, moral shock and social humiliation". He was, however, denied the right to recover moral damages because Article 2219 of the new

Civil Code does not cover his case. From the judgment dismissing the complaint both parties appealed.

Mabutas' claim is that the lower court erred in not awarding him moral damages and attorney's fees, considering that the acts committed by the company were in violation of public policy and constituted a breach of contract in bad faith. Upon the other hand, the company disputes the finding of the lower court that it had violated the rules and regulations of the Public Service Commission in disconnecting the line of Mabutas and contends further that said court erred in not finding that the latter filed his action maliciously.

Let us first consider the first question raised by the company, namely, that in disconnecting the line of Mabutas it did not violate the rules and regulations of the Public Service Commission, particularly section 97 thereof which provides, inter alia, that when the billing period covers a month or more the minimum time to be given to the customer to pay his bill shall be 10 days after the bill had been rendered and that upon expiration of the specified time service may be discontinued for the non-payment of bills provided that a 48-hours written notice of such disconnection has been given the customer, and provided further that the disconnection shall not be made on Sundays and official holidays and never after 2:00 p.m. of any working day.

The disconnection herein involved was not made on a Sunday or official holiday nor after 2:00 p.m. Upon the other hand, that Mabutas was in default in the payment of his July account is not denied. The only question for determination therefore is whether or not he was given the required 48-hours written notice provided by the rules and regulations.

It seems obvious to us that, to carry out effectively the policy of the Commission, the 48-hour notice required by the rule and regulation under consideration must be given *after* the customer has incurred in default in the payment of his monthly account. In the present case the time given to Mabutas to pay his bill for July, 1950 expired at noon on August 17. Thereafter he was clearly entitled to a written 48-hours notice before his line could be disconnected upon the ground of his failure to pay his bill for the previous month. The notice generally stamped on the bills rendered by the company to its customers to the effect that, should the latter not pay said bills by 12:00 noon on the 17th of a given month, their lights would be disconnected, is not in accord nor does it comply with the rule and regulation in question. In this connection it appears that formerly the customers of the company were required to pay on the 15th of every month their light bills for the previous month but after a conference with the municipal mayor and the People's

Counsel the time of payment was extended to the 17th (noon) of every month. In the case before us, therefore, Mabutas defaulted only after 12:00 o'clock noon on July 17, 1950. This being so, the disconnection of his line could not be lawfully made without giving him thereafter the 48-hours written notice required. The reason for this requirement obviously is to give the customer another opportunity to pay his bill before subjecting him to the inconvenience of having his electric facilities discontinued, in much the same manner as, and for the same reason that in unlawful detainer cases the law has provided that when the ejectment is sought upon the ground of the tenant's failure to pay the agreed rental, the complaint may not be filed without giving him a 5 or 15-day notice, as the case may be.

Coming now to Mabutas' right to damages, we find ourselves constrained to agree with the trial court that, upon the ground stated in the appealed judgment, he is not entitled to recover moral damages, including attorney's fees. Moreover, the right to moral damages is based on equity, and the principle is well known that he who comes to court in demand of equity must come with clean hands. Mabutas cannot claim in this case to have come to court with clean hands, the evidence disclosing affirmatively and without contradiction that he had defaulted in the payment of his July account with the company and that after his line had been disconnected he went to the offices of the latter and paid said bill too late for said company to be in a position to make a reconnection immediately. Had he done so earlier—as Gaila and Valencia did—his line might have been reconnected that same afternoon as was done in the case of said parties whose lines were connected to the same electric post. Even assuming, therefore, that the act of the company constituted a breach of public policy, we are constrained to deny his right to moral damages because Article 21 of the Civil Code relied upon by him must necessarily be construed as granting the right to recover damages only to injured persons who are not themselves at fault.

In the view we take of the case it follows necessarily that the company has no right to recover damages from Mabutas especially because the evidence is insufficient to establish that the latter acted maliciously in filing the present suit.

Wherefore, the appealed judgment is hereby affirmed, without costs.

It is so ordered.

De Leon and *Peña, JJ.*, concur.

Judgment affirmed.

[No. 9109–R. May 10, 1954]

FELIPE TABANDA, plaintiff and appellee, *vs.* ALFONSO TABORA, defendant and appellant

COURTS; JURISDICTION; JURISDICTION OF COURT OF FIRST INSTANCE TO TAKE COGNIZANCE OF ACTIONS FOR INJUNCTION INVOLVING ESTABLISHMENT OF COCKPIT; PARAGRAPH 5, EXECUTIVE ORDER NO. 318, IN RELATION TO PARAGRAPH 2 CONSTRUED.—The provision of paragraph 5 of Executive Order No. 318, in relation to the provisions of paragraph 2 thereof cannot be construed as directly or indirectly depriving courts of first instance of authority to take cognizance of actions for injunction whenever the matter involved is whether or not a cockpit is established or located in any place not authorized by said executive order. All that the regulation relied upon provides is that any person who believes that a cockpit is established or located in any place not authorized by Executive Order No. 318 may file a protest with the Secretary of Interior, who was authorized after proper investigation, to decide the case. This regulation does not abrogate the provisions of the Judiciary Act and the Rules of Court, granting to courts of first instance original jurisdiction to take cognizance of injunctive suits in any and all cases falling under their provisions. Neither does it provide for a preliminary administrative proceeding as a prerequisite for the exercise of such jurisdiction.

APPEAL from a judgment of the Court of First Instance of Baguio. Concepcion, *J.*

The facts are stated in the opinion of the court.

Jose P. Laurel and *Pastor L. de Guzman* for defendant and appellant.

Sanidad & Ayson for plaintiff and appellee.

DIZON, *J.*:

The present action was commenced by Felipe Tabanda against Alfonso Tabora in the Court of First Instance of the City of Baguio to restrain the latter from operating a cockpit in the municipality of La Trinidad, Benguet, Mountain Province. The complaint alleged, in substance, that Tabanda was the owner and licensee of a cockpit situated in said municipality, which had been in operation since 1945; that on Decmeber 15, 1949 the municipal council of La Trinidad had adopted a resolution limiting the operation of cockpits in said municipality to only one, said resolution having been approved by the provincial board of Mountain Province; that on June 14, 1951 Tabora secured from the municipal treasurer of La Trinidad a permit to construct a stadium or cockpit, which permit, however, was cancelled by said municipal treasurer on June 23 of the same year; that on September 19, 1951 Tabora paid to the office of the municipal treasurer of La Trinidad the sum of ₱75 as municipal license for the operation of his cockpit and said payment was erroneously accepted on the strength of a letter sent by the provincial treasurer of Mountain Province to said municipal treasurer on Au-

gust 25 of the same year; that the maintenance and/or operation of Tabora's cockpit was illegal and in violation of the resolution of the municipal council of La Trinidad mentioned heretofore. Upon these facts it was prayed that a writ of injunction be issued for the purpose already stated.

Resolving the petition of Tabanda for the issuance of a writ of preliminary injunction, the lower court issued on September 27, 1951 an order requiring Tabora to file a bond in the sum of ₱200 in favor of Tabanda to answer for whatever damages the latter might suffer due to the operation of the former's cockpit. Said bond was filed in due time.

In his answer Tabora admitted some of the allegations of the complaint and denied others. His affirmative allegations were, in substance, to the effect that the permit granted to him by the municipal treasurer of La Trinidad was for the construction of a building to be used as a stadium and as a cockpit; that while the license granted to Tabanda to operate his cockpit was to expire on September 30, 1951, the license granted to him was for the period beginning October 1 to December 31, both of 1951, resulting in that the provisions of the resolution of the municipal council referred to in the complaint were not violated; that said resolution was null and void, being unconstitutional and in conflict with the provisions of Act 601, as implemented by Executive Order No. 318; that he had spent ₱15,000 for the construction of his stadium and cockpit and to restrain him from operating the same after he had been granted the required license by the municipal treasurer would be unfair, unjust and would cause him irreparable damage. By way of affirmative defense he further alleged that Tabanda did not have a license to operate his cockpit for the fourth quarter of the year 1951 and that his cockpit did not comply with the requirements of Act 601, as implemented by Executive Order No. 318 regarding distances, sanitation, suitability and other particulars.

Upon the issues thus joined the case was tried and subsequently decided by the lower court as follows:

> "Wherefore, the court dismisses this action without special pronouncement as to costs.
>
> "The court thinks there is, for the present, no need for it to decide whether or not the municipal resolution prohibiting the existence of two cockpits in the same municipality is valid or not. If plaintiff cures the defect of his cockpit by complying with Executive Order No. 318, and desires to repeat the same action, which is hereby reserved to him once he has complied with the provisions of Executive Order No. 318, the court shall decide this legal point raised by the defense.
>
> "The prayer for an indemnity of ₱1,000.00 is also hereby dismissed for lack of sufficient evidence." (Record on Appeal, p. 35).

From said judgment only Tabora appealed after the lower court denied his motion for reconsideration filed on November 29, 1951. He now urges us to reverse said judgment upon the ground that the lower court erred firstly, in disregarding the testimony of Engineer Alberto S. Blancas regarding the direct distance between appellant's cockpit and the nearest public building, namely, the Lubas barrio school, and in giving full credit to the testimony upon the same point of Macario Bolido; secondly, in holding that appellant's cockpit does not comply with the provisions of Executive Order No. 318 regarding the distance there should be between cockpits and the nearest public building and lastly, in assuming jurisdiction over this case notwithstanding the fact that the Executive Department has not so far taken action upon the questions herein involved.

Appellant's contention regarding the lack of jurisdiction of the lower court, we find to be untenable. The provision of paragraph 5 of Executive Order No. 318, in relation to the provisions of paragraph 2 thereof, upon which he relies cannot be construed as directly or indirectly depriving courts of first instance of authority to take cognizance of actions for injunction whenever the matter involved is whether or not a cockpit is established or located in any place not authorized by said executive order. All that the regulation relied upon provides is that any person who believes that a cockpit is established or located in any place not authorized by Executive Order No. 318 may file a protest with the Secretary of Interior, who was authorized, after proper investigation, to decide the case. This regulation does not abrogate the provisions of the Judiciary Act and of the Rules of Court, granting to courts of first instance original jurisdiction to take cognizance of injunctive suits in any and all cases falling under their provisions. Neither does it provide for a preliminary administrative proceedings as a prerequisite for the exercise of such jurisdiction.

The issue involved in the other questions raised by appellant is nothing more than this: Is appellant's cockpit located at a distance of less than 1,000 lineal meters from any city hall or municipal building, provincial building, public plaza, public school, etc.? Upon this point the trial court found, mainly on the strength of the testimony of Macario Bolido, allegedly corroborated by that of Perfecto Jularbal, a private surveyor, that "the cockpit building of defendant is less than 1,000 meters distant from the public school of the barrio of Lubas, Municipality of La Trinidad", and although it did not decide the question of whether or not the municipal resolution prohibiting the existence and operation of two cockpits in the same municipality is valid, the court proceeded to reserve in favor of appellee the right to file a new action for in-

junction "once he had complied with the provisions of Executive Order No. 318".

After considering the material evidence upon the issue under consideration, we feel constrained to disagree with and reverse the finding aforesaid. Upon the question of how far is appellant's cockpit from the Lubas school building, the principal witness for appellant was Alberto S. Blancas, while appellee's principal witnesses were Macario B. Bolido and Perfecto Jularbal.

Blancas was and had been a civil engineer in the Bureau of Public Works, Benguet, Mountain Province, since April 9, 1951. As civil engineer he had taken two years course of surveying because surveying "is a part of civil engineering." In his official capacity aforesaid and by order of his superior, the District Engineer, he made a transit survey in connection with the application of appellant to construct a building and to operate therein a cockpit at Kilometer 3, municipality of La Trinidad, said survey having been made and completed on two successive days, June 6 and 7, 1951, and the same having resulted in the drafting and submission of the corresponding plan now marked as Exhibit 12. According to his findings, based on the field notations made in the course of the survey, "the nearest government building to the cockpit of Mr. Tabora in Trinidad is the Lubas school and the distance is approximately 1,010 meters". This distance was the "direct distance" and not the "horizontal distance", the latter being "only a kilometer", or "about 1,000 meters".

Upon the other hand, Bolido appears to be a "survey man of the Bureau of Public Works", with 27 years experience as such. On July 28, 1951, pursuant to an order of the District Engineer of Benguet, he measured the distance between the Lubas school building and appellant's cockpit and he found that the distance was "932 meters center to center between the two buildings", this distance being the "horizontal distance", the same having been obtained and measured "through breaking the chain". He made the survey alone while Engineer Blancas made the survey "with a party", that is, accompanied by a regular survey personnel. His survey was not certified by Engineer Quinto because Engineer Blancas' survey was ahead of his and appears to have been the one certified by Quinto. The certificate filed by him was issued upon request of Mayor Ezra Nabus.

Jularbal, on the other hand, was a private land surveyor who on October 8, 1951 was requested by Deputy Governor Luis P. Hora to measure the distance between appellant's cockpit and the Lubas school for a fee of ₱100.00. Hora was present all the time the survey was made. The horizontal distance found by him from the northeast corner post of appellant's cockpit to the southwest corner post of Lubas school is 909 meters and 88 centimeters. He did not com-

pute the direct distance between the two buildings although in his estimate it will exceed the horizontal distance.

It appears, therefore, that the survey undertaken by Engineer Blancas was made in the performance of his official duties and was expressly ordered to be done in connection with the application of appellant to build his cockpit; that the result of the survey was approved by Engineer Quinto; that it was made by Blancas accompanied by a regular survey party and presumably with the use of the necessary instruments and equipment; that as a result thereof, appellant was granted the corresponding permit to proceed with the construction of his cockpit. Upon the other hand, Bolido's work or survey report does not appear to have been certified by Engineer Quinto; he appears to have made the survey alone and his finding does not even tally completely with that of Julabal. The latter, on the other hand, turns out to be not an entirely unbiased witness, the record disclosing that he was a paid expert whose opinion must therefore be carefully scrutinized. Forced to choose whom to believe, we unhesitatingly say that, all things considered, Blancas' testimony is deserving of greater weight not only because of his character and training as civil engineer and lack of bias or interest in the result of this case but also on the strength of the fact that he performed the survey pursuant to official duty and did so with the help of the necessary trained personnel and equipment. His testimony to the effect that, in his opinion, the horizontal distance between appellant's cockpit and the Lubas school building is "only a kilometer" or "about 1,000 meters" does not justify at all the discarding of his whole testimony to place reliance entirely upon that of Bolido and Julabal, because such statement does not in any way contradict his other finding that the direct distance between the two buildings was 1,010 meters.

As a result, therefore, we find that on the strength of the more reliable evidence of record, the horizontal distance between appellant's cockpit and the nearest public building, namely, the Lubas school building is a kilometer, while the direct distance is 1,010 meters.

Modified as above indicated, the appealed judgment is affirmed in all other respects except as to the reservation of right made in favor of appellee regarding the filing of an action similar to the present after he has complied with the provisions of Executive Order No. 318. Such reservation, in our opinion, is either unnecessary or of no legal force whatsoever. Without costs.

It is so ordered.

De Leon and *Peña, JJ.*, concur.

Judgment modified.

[No. 9567-R. May 11, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* GREGORIO BALTAZAR y MENDIOLA, defendant and appellant.

CRIMINAL LAW AND PROCEDURE; DOUBLE JEOPARDY; RULE.—The rule that "where after the first prosecution a new fact supervenes for which the defendant is responsible, which changes the character of the offense and, together with the facts existing at the time, constitute a new and distinct offense (15 Am. Jur., 66), the accused cannot be said to be in second jeopardy if indicted for the new offense" (People *vs.* Melo, 47 Off. Gaz., 4631.), reiterated.

APPEAL from a judgment of the Court of First Instance of Manila. Narvaza, *J.*

The facts are stated in the opinion of the court.

Florentino M. Guanlao for defendant and appellant.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Jesus A. Avanceña* for plaintiff and appellee.

NATIVIDAD, *J.:*

The appellant was charged in the Court of First Instance of Manila with the complex crime of attempted robbery with serious physical injuries. After trial, he was convicted only of serious physical injuries, with attendance of the mitigating circumstance of non-habitual intoxication, and sentenced to the indeterminate penalty of from 6 months of *arresto mayor* to 2 years, 4 months and 1 day of *prisión correccional,* to indemnify the offended party in the amount of ₱1,000, with subsidiary imprisonment in case of insolvency, and to pay the costs. From this judgment, he appealed.

The evidence shows that the appellant, Gregorio Baltazar y Mendiola, and the offended party, Vicente Cua, lived in the same vicinity at Tioco Street, Tondo, Manila. At around two o'clock in the afternoon of July 20, 1951, while the offended party, who was a rig driver, was hitching a horse to a rig, the appellant, accompanied by one Manding, approached him and asked for the sum of one peso. The offended party told the appellant that he did not have money yet, as he was only about to go out to earn some. Irked by this statement, the appellant forthwith and without any warning, gave the offended party three fist blows, two in the stomach and one in the right eye.

Patrolman Ben Dunglao of the Manila Police Department, who was patrolling the vicinity, was notified by somebody of the incident. He immediately went to the scene of the trouble, and here he found the appellant parked along the middle of the street and surrounded by a crowd of people. He approached the appellant and, perceiving that the latter smelt of liquor, took him to the sidewalk. While Dunglao and the appellant were on the sidewalk, the offend-

ed party approached the former and showing him his bleeding eye, told him that he had been assaulted by the appellant. Patrolman Dunglao embarked the appellant and the offended party in a vehicle, dropped the appellant at Precinct No. 3 of the Manila Police Department, and took the offended party to the North General Hospital for treatment. The latter's injury was treated in said hospital by Dr. Perfecto de la Paz, a member of the staff thereof. This physician examined the body of the offended party, and as the only injury he found therein was that found in the right eye, which was bleeding profusely, he certified that such injury would take only 7 to 10 days to heal, and treated it. On the third day, however, Dr. De la Paz found that the injury in the eye of the offended party was more serious than he originally thought, and that it was necessary to remove completely the eye-ball, for its posterior wall had been ruptured. And so he subjected the offended party to an operation and removed the eye-ball of his right eye completely. For this operation, the offended party was hospitalized for two weeks and spent a total of ₱1,000.

The appellant was investigated in Precinct No. 3 of the Manila Police Department by Detective Alejandro Villamil of that department. He refused to make any written statement. He, however, admitted verbally to said investigator that he had boxed the offended party because the latter annoyed him, although he refused to give further details of the incident.

Appellant's defense consists of a denial of the charge and a farfetched explanation of how he happened to be arrested. He stated that he knew nothing about the alleged assault committed on the person of the offended party; that at between 12:00 and 1:00 o'clock in the morning of July 20, 1951, after drinking half a bottle of wine in a store in Herbosa Street, Tondo, he felt dizzy, and so he hailed one Manding, an acquaintance of him, and asked him to accompany him to his house; that on his way to his house he lost consciousness; that when he regained consciousness at about twilight that morning, he found himself confined at Precinct No. 3 of the Manila Police Department.

The questions raised in the four assignments of error made in appellant's brief center around two main propositions, to wit: first, whether or not the appellant had been placed twice in jeopardy of being convicted for the crime at bar, and second, whether or not his guilt of that crime has been established by the evidence beyond reasonable doubt.

1. It is contended under the first proposition that, as the information charging the appellant with the crime of less serious physical injuries, which was dismissed without his consent and after he had entered a plea of not guilty,

charges practically the same facts alleged in the information filed in this case, he has been placed in jeopardy for the second time of being convicted of the same offense.

Appellant's contentoin is untenable. In the case of People *vs.* Halo, (47 Off. Gaz., 4631), the Supreme Court, reversing all its previous rulings on the subject, laid down the following doctrine:

"This rule of identity does not apply, however, when the second offense was not in existence at the time of the first prosecution, for the simple reason that in such case there is no possibility for the accused, during the first prosecution to be convicted for an offense that was then inexistent. Thus, where the accused was charged with physical injuries and after conviction the injured person dies, the charge for homicide against the same accused does not put him twice in jeopardy.

"* * * * * * *"

"Stating in another form, the rule is that 'where after the first prosecution a new fact, supervenes for which the defendant is responsible, which changes the character of the offense and, together with the facts existing at the time, constitute a new and distinct offense' (15 Am. Jur., 66), the accused cannot be said to be in second jeopardy if indicted for the new offense."

It appears that, predicated on the first certification issued by Dr. Perfecto de la Paz that the injuries in the eye of the offended party would only take from 7 to 10 days to heal, the City Fiscal filed in the Municipal Court for the City of Manila an information, which was docketed as Criminal Case No. H–6913 of that Court, charging the appellant with the crime of less serious physical injuries only; that the appellant was arraigned on that information and he entered a plea of not guilty; that subsequent to appellant's arraignment, the City Fiscal moved for the dismissal of the charge, on the ground that a more appropriate action had been filed against the appellant in the Court of First Instance of Manila; and that this motion was granted and the case was dismissed by the Municipal Court with costs *de oficio*.

In the arraignment of the appellant on the information filed in the instant case, his counsel made certain preliminary remarks, which may be considered as a motion to quash, concerning the information for less serious physical injuries filed against him in the Municipal Court of the City of Manila, which was dismissed. Upon receiving, however, an intimation from the court that the case would not be dismissed, counsel offered to enter for the appellant a plea of not guilty with double jeopardy. This was granted by the court, and a qualified plea of not guilty with double jeopardy was entered for the appellant. Upon this plea, the trial of this case proceeded.

It thus appears that the rule invoked by the appellant has no application to the instant case. When the information charging the appellant with the crime of less serious

physical injuries was filed in the Municipal Court for the City of Manila, the only facts known to the prosecution were those charged therein, which only constitute that crime. The facts charged in the information filed in the instant case were then not in existence yet, as they constituted later developments. Moreover, the crime charged in the information in the instant case, which is serious physical injuries, is entirely distinct from that charged in the information filed in the case dismissed by the Municipal Court, which was less serious physical injuries. The present case, therefore, falls squarely under the sanction of the above ruling of the Supreme Court, and, consequently, it cannot be held that the appellant has been placed in jeopardy for the second time of conviction for the same offense under the information filed therein.

2. The second proposition raises a question of fact which must be decided upon the evidence of record. It clearly appears from the testimony of the witnesses for the prosecution that the appellant, irked by the refusal of the offended party to give him the sum of one peso, forthwith and without warning gave the latter three fist blows, two in the abdomen and one in the right eye; that as a consequence of the blow given in the offended party's eye that part of his anatomy suffered lesion which required the complete removal of the eye-ball thru an operation, and that for this operation the offended party was hospitalized for two weeks and spent a total of ₱1,000. These facts have not been overcome by the evidence of the defense. The uncorroborated statement of the appellant that he knew nothing about such aggression is certainly unavailing. Patrolman Dunglao is positive in his statement that shortly after the occurrence at bar he found the appellant parked in the middle of the street surrounded by a crowd and that while he and the appellant were standing on the sidewalk the offended party approached him and denounced the appellant as the person who had assaulted him. This statement is confirmed by that of Detective Villamil to the effect that the appellant admitted to him in the course of the investigation to which he had been subjected that he had assaulted the offended party because the latter annoyed him, although he refused to give any further details of the incident.

We, therefore, find, upon the evidence of the record, that the guilt of the appellant of the crime charged in the information filed in this case has been proved beyond reasonable doubt. The acts committed by him as disclosed by the evidence clearly constitute the crime of serious physical injuries, prescribed and punished in Article 263, paragraph 2, of the Revised Penal Code, because in consequence of the physical injury inflicted by him upon the offended party the latter lost an eye. We, however, agree with the trial court that the mitigating circumstance of non-habitual intoxication was present in the commission of the crime. Patrol-

man Dunglao testified that when he arrested the appellant shortly after the commission of the crime at bar the latter smelt of alcohol. It may be presumed, therefore, that the appellant was drunk at the time, and as there is no evidence that he was a habitual drunkard, he is entitled to the benefits of that mitigating circumstance.

Wherefore, the judgment appealed from, being in accordance with law and supported by the evidence, is hereby affirmed with costs.

It is so ordered.

Paredes and *De Leon, JJ.*, concur.

Judgment affirmed.

[No. 10961-R. May 11, 1954]

NESTOR DE CASTRO and TIRSO DE CASTRO, doing business under the trade-name "AMERICAN OFFICE EQUIPMENT COMPANY," plaintiffs and appellees, *vs.* CLEMENTE PUBLISHING CO., INC., ET AL., defendants and appellants. ALTO SURETY & INSURANCE CO., INC., third party plaintiff, *vs.* A. CLEMENTE & ENRIQUE CLEMENTE, third party defendants and appellants.

OBLIGATIONS AND CONTRACTS; BREACH OF OBLIGATION; DAMAGES UNDER ARTICLES 1106 and 1107, OLD CIVIL CODE; ELEMENTS.—Under articles 1106 and 1107 of the Old Civil Code, there are two necessary elements to be considered: firstly, that a damage has been done; and, secondly, that such damage was the result of the breach of the obligation. Where it reasonably appears that a party has been damaged, and such damage was the direct result of the breach, then a recovery is justified. Evidence on these points need not be absolute or beyond conjectural possibilities (Hicks *vs.* Manila Hotel Co., 28 Phil., 325).

APPEAL from a judgment of the Court of First Instance of Manila. Sanchez, *J.*

The facts are stated in the opinion of the court.

Luciano V. Bonicillo for defendants and appellants.
Tucidides de Castro for plaintiffs and appellees.

DE LEON, *J.:*

There are two contracts sought to be resolved, with damages, by the plaintiffs, doing business under the trade-name "American Office Equipment Company." The first is a contract of purchase (Exhibit A), dated May 30, 1949, entered into by and between American Office Equipment Co., represented by its manager, plaintiff Tirso de Castro, and defendant Clemente Publishing Co., represented by its president, Enrique Clemente, involving 50 typewriters which the former agreed to purchase from the latter for the total sum of ₱4,375, out of which the sum of ₱500 was received by the vendor as advance payment. The stipulated date of delivery is within 60 days from May 30, 1949. The payment of the balance on the purchase price shall

be made on date of delivery. A surety bond (Exhibit B) in the sum of ₱500 was furnished by defendants Clemente Publishing Co. and Alto Surety & Insurance Co., Inc., to fully and faithfully guarantee delivery of the said 50 typewriters in accordance with the deed of sale (Exhibit 8). The second is an indent agreement (Exhibit E), dated June 30, 1949, entered into by and between the same parties as in the first contract, and involves the sale to the plaintiffs of the rights of defendant Clemente Publishing Co. to purchase another 50 typewriters from the principal of the said defendant, including the right to import the same into the Philippines, for the sum of ₱300, which was paid by the plaintiffs on date of execution. A surety bond (Exhibit F) in the sum of ₱400 was furnished by defendants to fully and faithfully guarantee compliance with all the terms of the indent agreement, within 60 days from June 23, 1949.

It is uncontroverted that no typewriter was delivered to the plaintiffs on due date under both agreements, so that on September 24, 1949, plaintiffs filed the present action, praying the court below: (1) to rescind both contracts (Exhibits A and E) in view of the failure of defendant Clemente Publishing Co., to comply with their terms and conditions, as aforestated; (2) to order both defendants to pay, jointly and severally, the plaintiffs the sum of ₱500, with interest at 12 per cent from May 30, 1949, and the sum of ₱400, with interest at the legal rate, pursuant to the surety bonds, Exhibits B and F, respectively; and (3) to order both defendants to pay, jointly and severally, the plaintiffs the sums of ₱6,225 and ₱5,687.50, with legal interest, representing the profits which the plaintiffs failed to realize in view of the failure of defendant Clemente Publishing Co. to comply with its obligations under the contracts, Exhibits A and E, respectively.

In its answer, Clemente Publishing Co. urged the court below to dismiss the complaint and order the plaintiffs to open the necessary letter of credit as the typewriters so ordered could now be shipped to the Philippines by its principal, thus impliedly asking for an extension of the terms within which to comply which its obligations under the contracts (Exhibits A and E). In its answer, defendant Alto Surety & Insurance Co., Inc., included cross-claims against its co-defendant, alleging that it issued the surety bonds (Exhibits B and F) on the written assurance and undertaking of its said co-defendant for indemnity for any damages, payments and expenses, including attorney's fees of not less than 15 per cent which it may incur as a consequence of the execution of the surety bonds and default on the part of defendant Clemente Publishing Co. of its obligations under the contracts it had executed with the plaintiffs. Defendant Alto Surety Co., Inc., also filed

a third-party complaint against A. Clemente and Enrique Clemente pursuant to indemnity agreements they executed in its favor, agreeing, among others, to indemnify, jointly and severally, said defendant and third-party plaintiff for whatever damage or loss it may sustain in connection with, and arising out of, the surety bonds (Exhibits B and F), including attorney's fees of not less than 15 per cent and interests of 12 per cent. In their answer to the third-party complaint, A. Clemente and Enrique Clemente admitted having executed indemnity agreements in favor of the third-party plaintiff, as alleged in the third-party complaint, and stated that they were ready to grant relief to the third-party plaintiff not to exceed the sums of ₱500 and ₱400, plus 15 per cent as attorney's fees and 12 per cent interest, pursuant to the indemnity agreements signed by them.

After due trial, the court below rendered judgment, (1) ordering defendant Clemente Publishing Co. to pay the plaintiffs the total sum of ₱11,912.50, without interests; (2) ordering defendants Clemente Publishing Co. and Alto Surety & Insurance Co., Inc., to pay, jointly and severally, the plaintiffs in the total sum of ₱900, with legal interest from the filing of plaintiff's complaint until fully paid; (3) on the cross-claim of defendant Alto Surety & Insurance Co., Inc., ordering defendant Clemente Publishing Co. to pay cross-claimant Alto Surety Co., Inc., whatever amounts which the said cross-claimant might pay to the plaintiff's on account of the surety bonds in the total of ₱900, with legal interest from the date or dates of payment to be made by Alto Surety Co., Inc., to the plaintiffs and, (4) ordering Clemente Publishing Co., to pay the costs of suit.

On January 3, 1953, Alto Surety Co., Inc., filed a motion, praying for a judgment on the pleadings by ordering third-party defendants A. Clemente and Enrique Clemente to pay, jointly and severally, Alto Surety Co., Inc., the total sum of ₱900, with interest thereon at 12 per cent per annum, plus 15 per cent by way of attorney's fees, on the strength of the indemnity agreements admitted to have been executed by the third-party defendants in favor of third-party plaintiff Alto Surety Co., Inc., and the admission of said third-party defendants contained in the third paragraph of their answer. Accordingly, a judgment on the pleadings was rendered by the court below, the dispositive portion of which reads:

"Wherefore, judgment is hereby rendered ordering third-party defendants A. Clemente and Enrique Clemente, jointly and severally, to pay third-party plaintiff Alto Surety and Insurance Co., Inc., the total amount which the latter shall pay to plaintiffs Nestor de Castro and Tirso de Castro, doing business under the trade-name of American Office Equipment Co., under the decision herein of

December 11, 1952, plus 12 per cent thereon from the date of payment made by the Alto Surety and Insurance Co., Inc., to said plaintiffs plus an additional sum equivalent to 15 per cent of the total amount which might be paid by Alto Surety and Insurance Co., Inc., to plaintiffs, by way of attorney's fees."

In this appeal brought jointly by defendant Clemente Publishing Co. and third-party defendant A. Clemente and Enrique Clemente, it is contended that:

"1. The lower court erred in resolving the deed of sale (Exhibit A) because the complaint for resolution of this contract is not the proper remedy;

"2. The lower court erred also in resolving the indent agreement (Exhibit E) in view of the fact that the plaintiffs have not joined in the complaint the principal, John Flynn, as indispensable party defendant, for the agent defendant Clemente Publishing Co. is not liable on the contract;

"3. The lower court erred in awarding consequential damages to the plaintiffs upon the deed of sale and the indent agreement;

"4. Assuming, *arguendo*, that the plaintiffs are entitled to consequential damages, the lower court erred in so awarding them because of the incompetency of evidence and that the damages are quite excessive;

"5. The lower court erred in rendering judgment against the third-party defendant, A. Clemente; and,

"6. The lower court erred, by gross abuse of discretion, in denying the defendant, Clemente Publishing Company, and the third-party defendant, Enrique Clemente, the right to present their evidence."

Under the first assignment of error, it is contended that since the agreements (Exhibits A and E) do not fix definite terms for the delivery of the typewriters purchased, the lower court should have fixed such term, pursuant to Article 1128 of the old Civil Code. This argument is not tenable. The agreements and the surety bonds fix the terms for compliance, which are within 60 days from May 30, 1949, and June 23, 1949, respectively. No elucidation is necessary to drive home this point. Article 1124, not Article 1128 is, therefore, the provision of law applicable, and the lower court did not err in decreeing the resolution demanded. While it is true that the second paragraph of said Article 1124 authorizes the court to allow a term for the performance of the obligation, it can only do so when there are, in its opinion, grounds to justify the allowance or extension. Assuming that this codal provision authorizes the courts to allow a term, even where the contract in question fixes such term and obligor allows the same to elapse without complying with his obligations under it, we believe the extension of time prayed for by Clemente Publishing Co. in the case at bar could not be granted. If any justifiable reason exists for an extension of time to allow said defendant-appellant to deliver the typewriters to the plaintiffs-appellees, we do not understand why said defendant-appellant took no in-

terest in the speedy trial of this case. This case was heard only on December 18, 1951, or about 2 years from the filing of the complaint. On date of trial, counsel for said defendant company again tried to ask for a postponement on the ground that he has just been contracted that same morning to appear on behalf of Clemente Publishing Co. Judgment was rendered on December 11, 1952, the second date of trial, without the presence of counsel or any of the officers or representatives of Clemente Publishing Co. In the motion for reconsideration, dated January 10, 1953, filed on behalf of Clemente Publishing Co. and third-party defendants A. Clemente and Enrique Clemente, counsel alleged that he was unable to appear at the trial on December 11, 1952, because he was then sick with influenza, but the evidence of record does not show that efforts were exerted by said counsel, or someone on his behalf, to secure the postponement of trial before December 11, 1952.

Under the second assignment of error, it is argued that one John Flynn, who is named in the indent agreement (Exhibit E) as the principal of defendant Clemente Publishing Co., is an indispensable party and, therefore, should have been ordered included as a party defendant in the complaint. This issue was not pleaded in the answer of the defendant-appellant. It was not raised in the trial. Therefore, it could not be raised for the first time in this appeal (section 19, Rule 48, Rules of Court). Even if this particular issue was raised in the court below, it could have been properly rejected on the ground that courts could not acquire jurisdiction over his person as he has residence and business address at Los Angeles, California, according to the indent agreement, and the present action does not affect his personal status or relates to, or the subject of which is, property within the Philippines (section 17, Rule 7, Rules of Court).

The third and fourth assignments of error refer to the damages awarded to the plaintiffs-appellees. It is argued that defendant Clemente Publishing Co. should not have been held liable for damages because its non-compliance with its obligations under the contract were due to fortuitous events. This, again, is absolutely without merit. The allegations of the answer of defendant Clemente Publishing Co., is the best refutation of this argument. As alleged in paragraph 3 of its said answer, the only cause for the delay in the shipment of the typewriters is allegedly the desire of its principal abroad to have the machines examined one by one by a mechanic in order to comply with the requirements of the contracts. No allegations regarding strikes or rigidity of Import Control regulations were pleaded in the answer or in the motions for reconsiderations of the decision, dated January 10, 1953, and January 15,

1953. These defenses were, therefore, deemed waived in the lower court (section 10, Rule 9, Rules of Court) and, certainly, they could not be interposed or entertained in this appeal.

We shall now discuss whether the amount of damages awarded in favor of the appellees are proper and reasonable. Articles 1106 and 1107 of the old Civil Code provide:

"ART. 1106. The payment of losses and damages shall include not only the amount of the loss which may have been suffered, but also that of the profit which the creditor may have failed to realize, subject to the provisions contained in the following articles.

"ART. 1107. The losses and damages for which a debtor in good faith is liable for those foreseen, or which might have been foreseen, at the time of constituting the obligation, and which are a necessary consequence of the failure to perform it.

"In case of fraud or intentional wrong (*dolo*) the debtor shall be liable for all damages which clearly originate from the failure to fulfill the obligation."

Under these provisions, there are two necessary elements to be considered: firstly, that a damage has been done; and, secondly, that such damage was the result of the breach of the obligation. Where it reasonably appears that a party has been damaged, and such damage was the direct result of the breach, then a recovery is justified. Evidence on these points need not be absolute or beyond conjectural possibilities (Hicks *vs.* Manila Hotel Co., 28 Phil., 325). In the case at bar, the amount representing the profits which the appellees failed to realize by reason of the failure of Clemente Publishing Co. to deliver the typewriters within the period of time stipulated in the contracts, is in the total sum of ₱11,912.50. This amount is based on the statements (Exhibits I and I–1), prepared by Tucidides de Castro, sales manager of American Office Equipment Co., which include price quotations and names of prospective buyers. Manager de Castro testified that the company had already closed deals with its customers for the purchase of the typewriters at the price stated in the statements, Exhibits I and I–1. There is no evidence contradicting the statements and the testimony of the sales manager, and only the appellants have themselves to blame for this. While the estimate of profits appearing in the statements might bear the earmarks of speculation, it is not too remote and we are satisfied with its sufficiency, particularly in view of the fact that all that courts may require of litigants is the production of the best evidence available in a given case (Hicks *vs.* Manila Hotel Co., *supra*).

Counsel for the appellants contend, under the fifth assignment of error, that the trial court erred in rendering a judgment on the pleadings against third-party defendant A. Clemente. His reason in support of this contention that said party-defendant was not served with notice of hearing during the entire course of the proceedings in

the court below. A. Clemente and Enrique Clemente filed a joint answer on March 12, 1951. The lower court found that said answer of the third-party defendants tendered no issue at all. Under paragraph 3 of their said answer, the third-party defendants admitted their liability, but that their said liability to the third-party plaintiff does not exceed ₱500 in one case and ₱400 in the other case, or a total of ₱900 for both cases, plus 15 per cent as attorney's fees and 12 per cent per annum as interests, in accordance with the indemnity agreements signed by them. These are the same amounts claimed by the third-party plaintiff in its motion for judgment on the pleadings against the third-party defendants. Attorney Luciano V. Bonicillo, counsel of all the appellants, including A. Clemente, in this appeal, received a copy of the motion for judgment on the pleadings, signing therein as "Attorney for Defendants". Assuming, however, that Luciano V. Bonicillo was not the lawyer of said A. Clemente in the court below, we believe that lack of service on his part of copies of processes and orders issued by the court below does not constitute substantial error reversible on appeal, since we also find that the answer of the third-party defendants presented no issue at all, and it would be an idle ceremony, wasting merely the time of the court, to require the third-party defendants to produce their evidence, particularly in view of the fact that the brief for the appellants presents no valid defense which, if the third-party defendants were allowed to present, might have materially altered the judgment so rendered on the pleadings.

Under the last assignment of error, it is contended that the lower court erred, by gross abuse of discretion, denying the appellants, Clemente Publishing Co. and Enrique Clemente, the right to present their evidence. In refutation of this alleged error, we produce by reference our arguments under the first assignment of error, wherein we upheld the action of the court *a quo* in denying the motion for postponement of the trial set for December 18, 1951, as well as the motion for reconsideration, dated January 10, 1953.

We are of the considered opinion that this appeal was intended manifestly for delay. It is a frivolous appeal, presenting no justiciable question, either of fact or of law. Under Section 3, Rule 131, of the Rules of Court, double costs is hereby charged, jointly and severally, against all the appellants.

Wherefore, the decision appealed from is hereby affirmed in all its parts, with double costs against the appellants. So ordered.

Dizon and *Peña, JJ.*, concur.

Judgment affirmed with double costs against appellants.

[No. 8711-R. May 13, 1954]

FRANCISCO DAYRIT, plaintiff and appellee, *vs.* MANUEL PLATA and LUZON SURETY CO., INC., defendants and appellants.

SURETYSHIP; SURETY'S LIABILITY; WHEN SURETY IS DEEMED RELEASED FROM LIABILITY.—A surety will be deemed released from liability only when the creditor and the principal debtor enter into an agreement which essentially varies the terms of the principal contract by either reducing or increasing the risk to the surety, or by imposing additional duties upon the principal debtor not anticipated directly or indirectly by the terms of the general waiver in the bond, or when the parties enter into a new contract different from the one which the surety agreed to stand for.

APPEAL from a judgment of the Court of First Instance of Rizal. Perez, *J.*

The facts are stated in the opinion of the court.

Tolentino and *Garcia* for defendants and appellants.

M. G. Bustos, Remedios D. Garcia and *Pedro S. Aduana* for plaintiff and appellee.

DIZON, *J.:*

On June 18, 1950 Francisco Dayrit, as owner, and Manuel Plata, as contractor, executed in the City of Manila the written building contract Exhibit A which specified the plans, specifications and materials to be used. Pursuant thereto the contractor obligated himself to furnish, at his expense, all the labor and materials to be used in the construction of the building for the total sum of ₱20,000 payable in accordance with the schedule set forth therein and to finish the building within 75 working days to be counted from 5 days after the execution of the contract. Likewise the contract provided that the contractor shall pay an indemnity of ₱15 per day of delay.

To secure the faithful performance of the contractor's obligation, Luzon Surety Co., Inc.—to be referred to hereinafter as the bonding company—executed the surety bond Exhibit B whereby it bound itself to jointly and severally answer for the contractor's default up to a maximum amount of ₱3,000.

It appears that Plata undertook the construction of the building agreed upon and that Dayrit, in turn, had made payments to him amounting, as of September 17, 1950, to ₱19,003.30. On September 10, 1950, however, Plata abandoned the construction of the building. Ten days before that date, Dayrit had notified the bonding company that Plata had stopped bringing in construction materials for use in the construction of his building and that judging from the work done theretofore Plata would not be able to finish the construction within the stipulated period. On September 12, 1950 Dayrit again notified the

bonding company of the fact that the contractor had abandoned the work. This notice was reiterated on September 18, and September 30 of the same year 1950.

On October 7, 1950 the three interested parties held a conference in the office of the manager of the bonding company. As a result thereof Plata promised and agreed to finish the construction upon the promise of Dayrit to give him an additional sum of ₱1,000 upon the completion and delivery thereof together with the final certificate of approval of the Engineer of Quezon City. It appears also that the manager of the bonding company advanced the sum of ₱500 to Plata for him to purchase materials with. On October 12 the latter resumed work on the building but again abandoned the same three days thereafter without having purchased any materials with said amount of ₱500.

The present action was filed by Dayrit to recover from both the contractor and the bonding company the sum of ₱5,000 alleged to be the value of the materials and labor required to finish the building plus the liquidated damages of ₱15 per day of delay from September 10, 1950 when the 75 working day period agreed upon expired.

In his answer Plata alleged the defense that Dayrit had requested him to make changes and alterations in the plans of the building which resulted in greater expense and more work than that contemplated in the building contract; that the contract was novated when in the conference held by the parties on October 7, 1950 Plata agreed to resume the construction upon the promise of Dayrit to pay him an additional sum of ₱1,000 and the additional promise of the bonding company to give him the sum of ₱500 and inasmuch as the novated contract did not specify any definite period of time for the termination of the construction, he claimed not to have incurred in default. By way of counterclaim he asked for a reasonable compensation for the alterations allegedly made upon request of Dayrit and for the sum of ₱1,000 payable to his son for the making of the plan of the building.

Upon the other hand, the answer filed by the bonding company alleged, in substance, that its maximum liability in this case was not to exceed ₱3,000; that Plata as well as the bonding company had complied with their obligations under the contract; that the building contract had been materially altered without the knowledge and consent of the bonding company, that Dayrit had failed to comply with the terms of the contract regarding the payments to be made to Plata.

Before the trial of the case the parties agreed to ask the City Engineer or his representative to conduct an ocular inspection of the unfinished building to determine

and appraise the value of the materials and labor for any extra or additional work done outside those provided in the contract and plan, and to assess the probable cost of finishing the building. For this purpose Oscar S. Santos, Chief Building Inspector, Department of Engineering, Quezon City, Basilio Mendoza, Building Inspector, and Conrado F. Ochoa, Assistant Chief Building Inspector, were designated to make the inspection and appraisal and they submitted their respective reports now in the records as Exhibits B, E-1 and I.

After trial the lower court rendered judgment

"Sentencing the defendants to pay jointly and severally to the plaintiff the sum of ₱4,951.60, plus the additional sum of ₱15 daily from September 10, 1950 up to the date of completion of the building involved herein, with interest at the legal rate from the date of filing of the complaint, and costs. The liability of defendant Luzon Surety Co., Inc., however, shall not exceed ₱3,000.

"Defendant Manuel Plata's counterclaim is hereby ordered dismissed." (Record on Appeal, pp. 36–37.)

Plata and the bonding company appealed. The former's appeal, however, was dismissed for failure to prosecute on September 9, 1953. The bonding company now prays for the reversal of the appealed judgment upon the ground that the lower court erred first, in not holding that the original building contract was materially altered without its knowledge and consent as surety; second, in not holding that appellee failed to notify the bonding company of Plata's default within five days thereafter, pursuant to the terms of the bonding contract, and finally in adjoining Luzon Surety Co., Inc. liable under its bond.

Appellant contends that appellee, without its knowledge and consent, had made changes in the building contract regarding: (1) the manner of payment provided therein, (2) the purchase of materials and (3) had introduced certain additions to the basic contract itself not guaranteed by its bond.

In connection with the payments made by appellee to Plata it appears that on June 10, 1950 the latter asked and received from the former the first payment of ₱3,000. Thereafter and on twenty-six other occasions, Plata asked and received from appellee the different sums of money mentioned in Exhibits C–1 to C–26.

In connection with the construction materials which, according to the contract, should be supplied by the contractor, the evidence disclosses that Plata had repeatedly requested appellee to make the advanced purchase of materials needed because the cost thereof was increasing from day to day. For this reason appellee had to give to Plata from time to time and on the dates mentioned in the receipts Exhibits C–1 to C–26 the money needed to make the purchases. It was for that reason that the terms

of payment in the building contract were not followed to the letter.

As regards the alleged material changes in the basic contract or "extra works" ordered by Dayrit, it is appellant's claim that the same were the construction of *media-agua*, the use of white tiles in the closet and other minor details.

Even assuming, for the sake of argument, that the contention of the bonding company in these respects were true, we do not believe that the "changes" or "extra-work" are so great that they constituted a substantial alteration of the original contract sufficient to support the view that the same was novated, the novation giving rise, as a result, to the release of the bonding company. The very authorities cited by appellant are to the effect that a surety will be deemed released from liability only when the creditor and the principal debtor enter into agreements which essentially vary the terms of the principal contract by either reducing or increasing the risk to the surety, or by imposing additional duties upon the principal debtor not anticipated directly or indirectly by the terms of the general waiver in the bond, or when the parties enter into a new contract different from the one which the surety agreed to stand for. As already stated, we do not consider the alleged alterations relied upon by appellant in this case to be of such nature. Moreover, we quote hereunder and make ours the pertinent conclusions arrived at by His Honor, the Trial Judge, in relation to the point under consideration:

"Now, was the building contract, Exhibit A, substituted thru novation by subsequent contract? Plata alleges that when the plaintiff and Mr. Rodriguez permitted him to resume the construction of the building after the conference of October 7, 1950 without specifically agreeing on when he should finish the work, a novation was effect in the sense that he could no longer be bound by the terms of Exhibit A of finishing the construction within the period originally agreed of seventy-five days. Likewise, Plata contends that when Dayrit requested him to make certain alterations in the construction, a novation was likewise effected. We cannot agree with defendant Plata's contention. Under both the Civil and Common Law, in order that one obligation may be extinguished by the creation of another, the extinguishment must be made to appear clearly. Novation is never presumed and must be expressed and it only takes place when the contracting parties expressly disclose that their object in making the new contract is to extinguish the old contract, otherwise the old contract remains in force and the new contract is added to it, and each gives rise to an obligation still in force. (Tiu Siuco *vs.* Habana, 45 Phil., 707; Sapanta *vs.* De Rotaecho, 21 Phil., 154; Hard *vs.* Burton, 20 Atl. 269, 271; 62 Vt., 314; Hamlin *vs.* Drummond, 39 Atl., 551, 51 Mo., 175). "It was a principal of the civil law that there must be an express intention to novate—*animus novendi*. A novation is never presumed. (Sharp *vs.* Fly, 68 Tenn., [9 Ext.], 4, 10.) When Plata resumed his work after the conference of October 7, 1950, there was no specific agreement by the parties that plaintiff Dayrit was waiving the seventy-five days clause embodied in Exhibit A. There being no such specific

agreement, it cannot be presumed that the agreement on the period within which the construction was to be finished was novated.

"Even if the supposed alterations or changes claimed by defendant Plata were true yet there is no showing that said alterations or changes are so great that the original contract cannot be followed and therefore it will not be deemed that a novation had taken place. Although numerous and expensive changes and alterations were made, where it appears that the original plans were followed in the construction of the main body of the building the original contract may not yet be considered abandoned and it is only where the extent of the alterations or changes are so great that the original contract cannot be followed that it will be deemed to have been abandoned. (Tiu Siuco *vs.* Tabana, supra.) The Court therefore holds that no novation of the original contract, Exhibit A has taken place." (Record on Appeal, pp. 32-34).

To the above we wish to add that, if there had been substantial alterations made in the original contract or "extra-work" done upon petition of appellee, Plata would not have agreed to resume work on the building at the conference held with the two other parties on October 7, 1950 without making a demand for a full payment of their cost. Instead of doing so, he agreed to finish the construction upon the promise of Dayrit to give him an additional ₱1,000 as a "gift".

In connection with the second error allegedly committed by the lower court the record discloses that since August 30, 1950, appellee had notified the bonding company of the violation of the contract by Plata (Exhibit D). On September 12, 1950 appellee again notified the bonding company that the contractor had abandoned the work and again on September 18 and September 30 and October 31 a similar notice was given by appellee to the company (Exhibits D-1, D-2, D-3). Because of these notices the bonding company held a conference with the two other parties on October 7, 1950 in the course of which all pending matters amongst them were threshed out, this conference resulting, as stated heretofore, in the promise of Plata to resume the construction works, which he did, abandoning them again after three days, without having purchased any materials with the money advanced by the bonding company. All these facts and circumstances show conclusively that appellee had complied with its duty of giving proper notice to the bonding company.

The third question raised in this appeal being merely a consequence of the other two need no particular consideration.

Wherefore, finding the appealed judgment to be in accordance with law and the evidence, the same is hereby affirmed, with costs.

It is so ordered.

De Leon and *Peña, JJ.*, concur.

Judgment affirmed, with costs.

[No. 11011-R. May 14, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ISABELO ASA and MARIANO BALBASTRO, defendants and appellants.

CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARMS; ACTING UNDER A MISTAKE OF FACT; ACQUITTAL; CASE AT BAR.—When neither of the accused had ever intended to commit the offense of illegal possession of firearms (U. S. *vs.* Samson, 16 Phil., 323); when both believed in good faith that, as civilian guards under councilor Asa and under the circumstances and facts of this case, they could have the garand rifles in question in their possession, they cannot be held liable for the offense charged because they never had any intention of violating the law (68 Corpus Juris, 39).

APPEAL from a judgment of the Court of First Instance of Batangas. Enriquez, *J.*

The facts are stated in the opinion of the court.

Fidel Manalo for defendants and appellants.

Assistant Solicitor General Guillermo E. Torres and *Acting Solicitor Pio P. Cordero* for plaintiff and appellee.

DIZON, *J.:*

From the judgment of the Court of First Instance of Batangas finding them guilty of illegal possession of firearms and sentencing each of them to an indeterminate penalty of not less than 5 nor more than 6 years of imprisonment and to pay one third of the costs, Isabelo Asa and Mariano Balbastro interposed the present appeal and now pray for the reversal of said judgment upon the ground that the trial court committed the following errors:

I

"The learned trial court erred in not finding that appellant Isabelo Asa was a possessor in good faith of garand rifle with serial No. 2392720 (Exhibit A).

II

"The learned trial court erred in finding that garand rifle with serial No. 1608649 (Exhibit B) was in the possession of appellant Mariano Balbastro.

III

"The learned trial court erred in finding the herein appellants guilty of the crime charged in the information and in sentencing each of them to suffer imprisonment of 5 years as minimum and 6 years as maximum, and to pay one-third of the costs."

In the afternoon of December 18, 1951, Sgt. Espiridion Viernes and his men went to barrio Putingkahoy, Rosario, Batangas, to make a search for unlicensed firearms in the houses indicated by a certain Ronquillo, among which were those of Councilor Juan L. Asa and the two appellants herein.

From Isabelo Asa they confiscated a garand rifle with serial No. 2392720 (Exhibit A) and from Balbastro another garand rifle with serial No. 1608649 (Exhibit B), from Daniel Osmillo another garand rifle with serial No. 2344911

(Exhibit C), from Sebastian Castillo a carbine with serial No. 7421108 (Exhibit D), from Ventura Ilao another carbine with serial No. 1669402 and from Margarito Lumanglas another carbine with serial No. 7426732. Ilao and Lumanglas were indicted under a separate information. Osmillo and Castillo were still at large at the time of the trial, and so only Juan L. Asa, Isabelo Asa and Mariano Balbastro were tried. The first was acquitted while the other two, as already stated, were convicted.

There is no question that three of the firearms mentioned heretofore were owned by Juan L. Asa and were registered in the PC Headquarters at Alangilan, Batangas, Batangas, since 1950 (Exhibits 4–A, 4–B, 5–A and testimony of Sgt. Dimalaluan).

Neither is it questioned that garand rifle with serial No. 2392720 and garand rifle with serial No. 1608649 were found in the possession of Isabelo Asa and Mariano Balbastro, respectively, who held no permit or license to bear the same.

The evidence for the defense is to the effect that on account of threats from dissident elements after Juan L. Asa had effected the surrender of Huk Commander Bayani, and in view moreover of the distance of his home in barrio Putingkahoy from the población, Councilor Asa secured from the PC Provincial Commander a permit for three arms he had already sold to the government (Exhibit 3–A); that he entrusted one of them to Isabelo Asa, and the rest to other members of the Civilian Guard Organization of his barrio because he could not personally handle all said firearms and because, after all, he relied upon his barriomates to help him protect their homes from the dissidents; that Councilor Asa had authority from the constabulary authorities to collect loose firearms (Exhibits 2, 6 and 8); that pursuant to such authority as well as in his capacity as an MIS agent (Exhibit A), Councilor Asa ordered Balbastro on December 17, 1951 to get the garand rifle with serial No. 1608649 from a certain Eulogio Decepeda, who had no permit for the same and who was not a member of the Civilian Guard Organization; so that the same could be surrendered to the constabulary authorities, but that before Balbastro could deliver it to him, Sgt. Viernes and his men came and confiscated it.

Upon this evidence, the trial court acquitted Councilor Asa because, in its opinion, it had been established that he was provided with a temporary permit issued by the Constabulary Provincial Commander covering three of the firearms in question and because he was an MIS agent. After sentencing Isabelo Asa and Mariano Balbastro the same court recommended the granting of executive clemency to them as follows:

> "* * * As he has been ordered by Juan L. Asa to get the said firearm and the latter was granted authority on the

matter by the PC Provincial Commander under Exhibits 2 and 6, aside from Asa's function as MIS agent, the case of Mariano Balbastro is recommended to his Excellency, the President for Executive Clemency if the facts of the same so warrant. The same recommendation is made with respect to Isabelo Asa who merely acted as agent of Juan Asa."

From the above it appears clear that, in the opinion of the lower court, Balbastro had really been ordered by Councilor Asa to get the garand rifle with serial No. 1608649 from Decepeda so that he could surrender the same to the constabulary authorities. We agree with this finding, notwithstanding the statements, apparently to the contrary, contained in the document signed by Balbastro found at pages 8 and 9 of the original record. There is, in our opinion, sufficient evidence to show that said garand rifle was really obtained by Balbastro from Decepeda, upon orders of Councilor Asa; that he had no time to deliver it to the latter because, before he could do so, Sgt. Viernes and his men came to confiscate it. The defense evidence to this effect has not been successfully shown to be false or unworthy of belief.

In the case of Isabelo Asa, it is also clear that, in the opinion of the lower court, he merely acted as an agent of Councilor Asa. The latter had delivered garand rifle with serial No. 2392720 to him in order that he may help protect the barrio from the assaults of the dissidents. In this connection the lower court likewise said in its judgment that:

"* * * there is no proof whatsoever that the firearms were ever used for illegal purpose. On the contrary, there is uncontradicted evidence that he kept them for self protection against political enemies and dissidents and that he rendered signal service to peace and order campaign in fighting lawless elements and effecting the surrender of Huk Commander Bayani. At any rate, the arms which belongs to the Republic which bought them (Exhibit 3–A), were duly registered with the Military Area and the PC Headquarters, hence their existence and location are known to the authorities principally called upon to enforce the Firearms Law, and to whom they are available whenever needed. If follows that defendant Juan Asa should be acquitted." (Appellants' brief, pp. 15–16.)

With particular reference to Isabelo Asa it can be said that there is no claim or pretense on the part of the prosecution that he is a citizen of doubtful character, that he had ever used the firearms entrusted to him by Councilor Asa for illegal purposes or for any purpose other than the protection of their community from the dissident elements.

Upon the facts thus held proven by the lower court we consider it unfair, after the acquittal of Councilor Asa, to convict appellants Isabelo Asa and Mariano Balbastro. The former received the garand rifle Exhibit A from Councilor Asa and kept it in his possession as a civilian guard; as such he was ready to use it against the enemies of peace and order, willing, in that connection, to assume risks and

even to lose his life in helping the military agencies of the government in the protection of the life, liberty and property of the inhabitants of their community. He labored during all the time he had the firearms under his control, in the belief that Councilor Asa, an MIS agent who had a permit covering said firearms, was authorized to give it to him, for him to use it for the purpose already mentioned. In the case of Balbastro, he merely obeyed the orders of Councilor Asa, whom he considered as his superior in the Civilian Guard Organization, in getting the garand rifle Exhibit B from Decepeda. All these circumstances, in our opinion, are sufficient to create at least a reasonable doubt in the mind of the court as to the guilt of the two appellants herein. To both we can very well apply the ruling of the Supreme Court in U. S. *vs.* Samson, 16 Phil., 323, because it is obvious that neither had ever intended to commit the offense charged. Both believed that, as civilian guards under Councilor Asa, they could have, under the circumstances already stated above, the garand rifles Exhibits A and B. This belief, although erroneous, was entertained in good faith. They acted, we might say, under a mistake of fact, and cannot be held liable for the offense charged because they never had any intention of violating the law (68 Corpus Juris, 39).

A judgment of conviction—especially in the case of Isabelo Asa—could perhaps be defended on the ground that, in his case, the facts proven show "animus possidendi", but such view could be maintained only by giving the law on the subject a rigid and literal interpretation. We do not believe it should be done in the case before us. A man of the condition and circumstances of appellant Asa would not be able to understand why he should be sent to a long term of imprisonment for having agreed to serve as an armed civilian guard under the command of a municipal councilor and at the same time an MIS agent, to whom the government had granted a permit to possess several firearms needed in the protection of the community in which they lived; in other words, he would forever be wondering why he had been punished for having responded to the call of public duty even at the risk of his life. That would make of him—and of anyone similarly situated an embittered man who would later on think twice before responding again to similar calls to public duty.

Upon all the foregoing, we are therefore of the opinion and so hold that, upon the ground of reasonable doubt as to the guilt of appellants, the appealed judgment should be, as it is hereby, reversed, with the result that said appellants are hereby fully acquitted, with cost de oficio. So ordered.

Gutierrez David and *Martinez, JJ.*, concur.

Judgment reversed.

[No. 10791–R. May 17, 1954]

NATIVIDAD GALLARDO and EUGENIO ALBERTO SANTIAGO, JR., minor and represented by his guardian *ad litem* NATIVIDAD GALLARDO, plaintiffs and appellees, *vs.* MARIA MIRANDA, FRED RUIZ CASTRO, Lt. Col., JAGS, and OFELIA and EUGENIO SANTIAGO, JR., defendants and appellants.

EVIDENCE; MARRIAGE; DECLARATION OF EITHER HUSBAND OR WIFE AS TO THEIR MARRIAGE, PROBATIVE VALUE OF.—As to whether a man and a woman are married; the declaration of either of them is competent evidence to show the fact (U. S. *vs.* Memoracion, et al., 34 Phil., 633). No witness is more competent than they are. Corroboration of the fact is not absolutely necessary if the declaration of either husband or wife is sufficient to satisfy the conscience of the court.

APPEAL from a judgment of the Court of First Instance of Manila. Jose, *J.*

The facts are stated in the opinion of the court.

Sansano & Joson for defendants and appellants.
Emiliano V. Malit for plaintiff and appellee.

PEÑA, *J.:*

A certain Lt. Eugenio Santiago of the Philippine Air Force died in a plane crash at Mt. Makaturing, Lanao, on May 18, 1947, leaving the sum of ₱8,538.08 for his arrears in pay and allowances. On July 11, 1947, Maria Miranda, for herself and in behalf of her minor children, Eugenio Santiago, Jr. and Ofelia Santiago filed a claim with the JAGS, Philippine Army. On September 29, 1947 the JAGS, when there was yet no adverse claimant of said arrears in pay of Lt. Santiago, ordered payment to Maria Miranda, as surviving spouse and as guardian of her minor children, in accordance, with the decree of final distribution dated September 11, 1947, of the amuont of ₱4,269.04, representing her one-half share interest in said arrears in pay, and in addition also ordered the payment to Maria Miranda, as legal guardian for her minor children, ₱500 each child, leaving a balance of ₱3,269.04, under deposit with the JAGS, subject to withdrawal by the guardian from time to time as the needs of the minor children would require. On November 19, 1947, Natividad Gallardo, claiming also to be the surviving wife of Lt. Santiago, in her behalf and in behalf of her minor son Eugenio Santiago, Jr. filed to the JAGS a claim for one-half of the arrears in pay of Lt. Santiago. The JAGS by letter dated November 24, 1947, informed Natividad Gallardo that the estate of Lt. Santiago, had already been settled under the provisions of Republic Act No. 136, and advised her if she believed prejudiced in the summary distribution of the estate, that the case be brought to court, so that the heirs of the deceased may be determined, and their controversy properly settled. Consequently, an action was filed by Natividad Gallardo as plaintiff against Maria Miranda and Lt. Col.

Fred Ruiz Castro, the Judge Advocate General, as defendants.

After trial, the Court of First Instance of Manila rendered decision in plaintiff's favor, the judgment being as follows—

"In view of the foregoing considerations, the Court finds that the plaintiff Natividad Gallardo, as lawful wife of the deceased Lieut. Santiago, is entitled to one-fourth of the arrears in pay due him from the USAFFE, which, under the law, is conjugal property, just as the defendant Maria Miranda is entitled to one-fourth of the same; and that the only legitimate son, Eugenio Santiago, Jr., of the plaintiff with the deceased, as well as the two legitimate children of defendant with the deceased, are each entitled to one-sixth of the said arrears in pay. On the one hand, the plaintiff's share, therefore, is in the amount of ₱2,134.52, and her son's share is in the amount of ₱1,423.01. The defendant, having been paid as her share the sum of ₱4,269.04, she therefore been overpaid in the sum of ₱2,134.52. In view thereof, the Court hereby orders the defendant Judge Advocate General, JAGS, Philippine Army, that out of the amount of ₱3,269.04 remaining under deposit with him, he caused to be paid, in due time and in accordance with Republic Act No. 136, to the plaintiff's son Eugenio Santiago, Jr. the amount of ₱1,423.01 as his share of the arrears in pay of the deceased Lieut. Santiago; and to the plaintiff herself as her share, the difference between said deposit of ₱3,269.04 and said sum of ₱1,423.01 or the sum of ₱1,846.03. The Court also here sentences the defendant Maria Miranda to pay to the plaintiff the sum of ₱288.49, which the former has unduly collected from the JAGS out of the share belonging to the latter, and to return to the defendant Judge Advocate General the sum of ₱1,846.03 which the defendant Maria Miranda has unduly collected from the JAGS out of the shares belonging to her two children, Eugenio and Ofelia, to thereafter dispose of by the Judge Advocate General in favor of said children in accordance with Republic Act No. 136. No special pronouncement as to costs. So ordered."

Upon appeal the Court of Appeals ordered the case remanded to the court of origin in order that Eugenio Santiago, Jr. Ofelia Santiago and Eugenio M. Santiago, Jr., be made parties in the suit assisted by legal guardians *ad litem* that may be appointed for them; that evidence, if any, may be received without the necessity of retaking that already appearing on record, and that a new decision be rendered thereon. Thus, in pursuance of the order the parties filed their respective pleadings in the Court below, including in the case the aforenamed children duly represented by their respective guardians *ad litem*.

After retrial, the judge, finding the previous decision well supported by the evidence on record and by the law on the matter, adopted it as his own.

The defendants come now before us and now maintain that the lower court erred—

1. In finding that Natividad Gallardo was legally married in good faith to Lt. Eugenio Santiago on April 28, 1942;

2. In applying to the case at bar the provisions of article 69 of the old Civil Code;

3. In applying to the case at bar the doctrine in the cases of

Sy Hoc Lieng *vs.* Sy Quia (16 Phil., 137) and Lao *vs.* Dee Tim (45 Phil., 739);

4. In holding that the plaintiff Natividad Gallardo is entitled to one-fourth and her son (Eugenio Santiago, Jr.) to one-sixth of the arrears in pay of Lt. Eugenio Santiago.

In June, 1938, the aforenamed Lt. Eugenio Santiago and María Miranda were married in Iloilo and out of their marriage two children were born, namely, Eugenio M. Santiago, Jr. and Ofelia Santiago. In March, 1942, the same Lt. Santiago was assigned to Mindanao where he met Natividad Gallardo. According to Natividad after the closing of the restaurant and refreshment parlor of her aunt, with whom she was living then in Malaybalay, Bukidnon, she joined the guerrillas in Cotabato as first aider and mess helper. On April 15, 1942, Natividad went to Midsayap and it was there where she again met Lt. Santiago and refreshed their love affair which grew for the first time in Malaybalay. Their engagement culminated into marriage on April 28, 1942, which was solemnized by one Isabelo Beltran, Adjutant of the 2nd Battalion of the 106th Division, 10 Military District, and Justice of the Peace designate of the free municipal government of the area occupied by this battalion. Major Andrews and Francisca Castanares acted as witnesses.

However, appellants vehemently maintain that the performance of the marriage between Lt. Eugenio Santiago and Natividad Gallardo on April 28, 1942, in Midsayap, Cotabato, was physically impossible, and it could not have been solemnized by Isabelo Beltran, for according to the letter of the local civil registrar, the government of said municipality was still functioning then and the Justice of the Peace thereof was one Jose Eleazar, and not Isabelo Beltrán who assumed the said position only in October, 1942. To bolster their claim that Lt. Santiago and Natividad could not have been married on the date in question, they presented Lt. Napoleón Estrada who, according to him, saw Lt. Santiago in Valencia, Bukidnon, where they were encamped. Valencia, it was claimed by Lt. Estrada, is sixty miles away from Midsayap. Lt. Orquiola, another witness for the appellants, corroborated Lt. Estrada's testimony.

But the very person, Isabelo Beltrán, who performed the marriage between Lt. Santiago and Natividad, positively testified on this fact, and his credibility was never assailed, much less controverted. And Natividad Gallardo, one of the contracting parties, in an unfaltering manner, corroborated the testimony of Isabelo Beltrán. It is now a settled rule in this jurisdiction that if a man and a woman are married, the declaration of either of them is competent evidence to show the fact. No witness is more competent than they are. Corroboration of the fact is not absolutely necessary if the declaration of either husband or wife is

sufficient to satisfy the conscience of the court. Certainly, there are no witnesses more competent than the husband or wife to testify as to whether they were married, the declaration of either of them is competent evidence to show the fact. (U. S. *vs.* Memoracion et al., 34 Phil., 633.)

Moreover, when we take into consideration that Lt. Santiago and Natividad Gallardo lived together as husband and wife from April, 28, 1942, upon to the death of the former on May 18, 1947, the fact of the marriage becomes strongly established. This is further supported by the documentary evidence of record (Exhibits A to J–1 and K to L–1). And the minor child, Eugenio G. Santiago, Jr., testified that his godmother is Susana Santiago, who is a sister of the deceased and told him that his late father was Eugenio S. Santiago. According to the Supreme Court—

> "* * * Persons dwelling together in apparent matrimony are presumed, in the absence of counter presumption or evidence special to the case, to be in fact married. The reason is that such is the common order of society and if the parties were not what they thus hold themselves as being, they would be living in the constant violation of decency and law. A presumption established by our Code of Civil Procedure is that a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage. (Sec. 334, No. 20). *Septer praesumitus pro matrimony*—Always presume marriage. (Son Cui vs. Guepengco, 22 Phil., 216; U. S. *vs.* Memoracion and Uri, 34 Phil., 633; Teter *vs.* Teter, 101 Ind. 129.)

The same presumption is envisioned by section 69 (bb), Rule 123, of the Rules of Court, and the same is predicated on the universal recognition that "the basis of human society throughout the civilized world is that of marriage." In this jurisdiction, "marriage is not only a civil contract, but it is a new relation, an institution in the maintenance of which the public is deeply interested" (Goitia *vs.* Campos Rueda, 35 Phil., 252). Hence, "every intendment of the law bears towards matrimony, when a marriage has been shown in evidence, whether regular or irregular, and whatever form of the proof, the law raises a strong presumption of its legality—not only casting the burden of proof on the party objecting, but requiring him throughout, in every particular to make plain, against the constant pleasure of this presumption, the truth of the law and the fact that is illegal and void" (Son Cui *vs.* Guepengco, 22 Phil., 216).

The unreliable testimonies of Lts. Estrada and Orquiola could not destroy the strong presumption of the fact of marriage of Lt. Santiago and Natividad Gallardo.

Appellants further endeavor to show that the solemnizing officer, Isabelo Beltrán, was not authorized to celebrate marriage. Suffice it to say in this connection that section 27 of the marriage law, Act 3613, provides—

"Failure to comply with formal requirements. No marriage shall be declared invalid because of the absence of one or several of the formal requirements of this act if, *when it was performed, the spouses or one of them believed in good faith that the person who solemnize the marriage was actually empowered to do so and the marriage was perfectly legal.*"

Natividad Gallardo was of the honest belief that her marriage to Lt. Santiago was being celebrated by Isabelo Beltrán in his capacity as Justice of the Peace of the free government of Midsayap, Cotabato. Moreover, there is no showing in the record that when Natividad Gallardo took the hands of Lt. Santiago "for better or for worse", the former was aware of any impediment to their marriage. Good faith is always presumed. And according to the Supreme Court "for the good faith to be perfect, it is necessary: (1) that the spouses celebrated their marriage with the prescribed formalities; (2) that, they were ignorant of the defects that rendered it void; and (3) that, their ignorance is excusable (Francisco et al. *vs.* Jason, 60 Phil., 442, 448). As to the compliance of these requisites by Natividad Gallardo, we are satisfied with what the record shows.

While it is true that article 69 of the old Civil Code was suspended by Governor General Weyler on December 21, 1889, it is equally true that our jurisprudence is replete with principles in consonance with said article. Among the leading cases wherein the principles embodied in said article have been applied are Sy Hoc Lieng *vs.* Sy Quia, 17 Phil., 137; Lao *vs.* Dee Tim, 45 Phil., 739; Adong *vs.* Cheng Gee, 43 Phil., 43; Mendoza *vs.* Paruñgao, 49 Phil., 271 and Francisco et al., *vs.* Jason, 60 Phil., 443. All the marriages questioned in those cases were contracted after the suspension of article 69, with the exception of the first case.

We could not subscribe to appellant's view to the effect that the doctrine laid down in the cases of Sy Hoc Lieng *vs.* Sy Quia and Lao *vs.* Dee Tim (*supra*) is not applicable to the case at bar, for the Supreme Court, in affirming in the latter case the doctrine laid down in the former, quoted the laws of the Partidas to the effect that—

"Where two women innocently and in good faith are legally united in holy matrimony to the same man, their children born will be regarded as legitimate children and each family will be entitled to one-half of the estate of the husband upon distribution of the estate."

In the recent case of Estrella *vs.* Nasa, 38 Off. Gaz., No. 4, p. 79, the Supreme Court said—

"A marriage contracted in good faith, although subsequently declared null, produces nevertheless civil effects regarding the spouse who has acted in good faith and the children begotten by him, who deserve by law the consideration of being legitimate as if they had been born from parents legally married."

In the light of the forequoted ruling and those laid down in the cases of Francisco et al. *vs.* Jason and Men-

doza *vs.* Paruñgao, *supra*, we agree with the trial court that plaintiff Natividad Gallardo is entitled to ½ and her son (Eugenio Santiago, Jr.) to ⅛ of the arrears in pay of Lt. Eugenio Santiago.

Wherefore, the appelead judgment being in accordance with law and the evidence is hereby affirmed, without pronouncement as to costs.

It is so ordered.

Felix and *Rodas, JJ.*, concur.

Judgment affirmed.

[No. 10926-R. May 18, 1954]

PABLO BULANDUS, plaintiff and appellee, *vs.* FELICIDAD DAGAN DE ARCINO, defendant and appellant

1. PLEADING AND PRACTICE; HUSBAND AND WIFE; JOINDER OF PARTIES; WHEN HUSBAND MAY NOT BE JOINED IN A SUIT AGAINST THE WIFE.—In an action against the wife for sum of money, the husband who had been separated from her for more than one year before the commencement of the action need not be joined (par. 2, Art. 113, New Civil Code).
2. EVIDENCE; ESTOPPEL.—The defendant having stated under oath that she was the "absolute owner in fee simple" of the two-story house she had mortgaged to the plaintiff, is estopped from going against said declaration which she deliberately and intentionally made the plaintiff to believe (sec. 68, Rule 123, Rules of Court).

APPEAL from a judgment of the Court of First Instance of Rizal. Tan, *J.*

The facts are stated in the opinion of the court.

Narciso B. Cruz, Jr. for defendant and appellant.

M. I. Mendiola and *P. Almeda* for plaintiff and appellee.

PAREDES, *J.:*

Plaintiff Pablo Bulandus seeks to recover from defendant Felicidad Dagan de Arcino the sum of ₱5,575, plus interest at the rate of 6 per cent per annum and the further sum of ₱500 as attorney's fees. The trial court rendered judgment, ordering the defendant to pay the plaintiff the amount of ₱4,825 with interest at 6 per cent per annum and the sum of ₱500 as attorney's fees, against which defendant interposed the present appeal.

The evidence adduced by the plaintiff fully shows the following facts:

On June 8, 1950 Felicidad Dagan de Arcino whose husband is an American citizen permanently residing in Washington, D. C., U. S. A., obtained a loan of ₱4,000, from plaintiff, payable within 1 year, with interest at 6 per cent per annum and secured by a mortgage of the two-story house owned exclusively by her (Exhibit A). Another loan of ₱700 was obtained by her from plaintiff on July 25, 1950, payable as follows:

₱50.00 on or before ..... August 15, 1950;
₱50.00 on or before ..... September 15, 1950;
₱50.00 on or before ..... October 15, 1950;
₱550.00 on or before ..... November 15, 1950.

(Exhibit E.)

On November 1, 1950, Felicidad again borrowed from the plaintiff the sum of ₱1,500, payable within 8 months, with interest at 6 per cent per annum (Exhibit G). She paid the sum of ₱1,175 for the loan of ₱4,000; the sum of ₱200 for the loan of ₱700; and nothing for the loan of ₱1,500, thereby leaving a balance of ₱4,825.

The defendant admits having contracted the loan of ₱4,000 described in Exhibit A; but alleges that the property mortgaged mentioned in said Exhibit A was conjugal, the house having been constructed by her husband was back in 1938, of which fact the plaintiff was fully cognizant, as he had lived in said house for some time; that on July 25, 1950, having been unable to pay the capital of the loan and the usurious interest on said loan, she executed Exhibit E in favor of the plaintiff, in which it was made to appear that she received ₱700, although she did not; that on November 1, 1950, having been again unable to pay the principal of the loan of ₱4,000 and the accrued usurious interest thereon, she executed Exhibit G, in which she once more acknowledged having received ₱1,500 as loan from the plaintiff, although she did not; and that she had paid the total amount of ₱1,725 thereof, leaving an unpaid balance of ₱2,275, with the stipulated interest. It also appears that before the commencement of the trial, the defendant moved for the dismissal of the case, on the ground that, being a married woman, she could not be sued without joining her husband as a co-defendant. The motion was denied, and the trial proceeded.

Counsel for appellant alleges in his brief that the trial court erred: (1) In denying the motion to dismiss; (2) In not ordering the inclusion of the defendant's husband as a co-defendants; (3) In discrediting appellant's evidence; and (4) In sentencing her to pay the sum of ₱4,825, with interest at 6 per cent and the further sum of ₱500, as attorney's fees.

The first and second assignments of error may be treated together. The inclusion of appellant's husband as a co-defendant was not necessary in the prosecution of this case. By appellant's own admission, her husband, an American citizen, is now permanently living in Washington, D. C. and had been separated from her for more than a year already, before this action was commenced. Appellant's case, therefore, comes under the exception provided by article 113, Civil Code, which states: "The husband must be joined in all suits by or against the wife, except: (1) * * * (2) If they have in fact been separated for at

least one year * * * (6) If the suit concerns her paraphernal property * * *." In Exhibit A which she admits to have been duly and lawfully executed, appellant under oath stated that she was "the absolute owner in fee simple" of the two-story house she had mortgaged to the plaintiff. Appellant is now estopped from going against a declaration which she deliberately and intentionally made the plaintiff to believe. (Section 68, Rule 128.)

It is claimed by appellant that Exhibits E and G represent the usurious interests the appellee wanted to charge her for the capital of ₱4,000. This contention is untenable. Exhibits 1, 2, 3 and 4 in the total amount of ₱1,175 show that the amounts represented by said Exhibits were paid on account of the ₱4,000 loan, and the amount of ₱150 stated in Exhibit 5 and another sum of ₱50 stated in Exhibit 6, were paid on account of the loan of ₱700. This being the case, it can not, therefore, be true that the sum of ₱700 represented usurious interest. Indeed, the appellant comes now with the allegation that she did not know the contents of Exhibits A, E and G, when she signed them. Considering the fact that the appellant testified in the English language in court, the very language used in said documents, it is hard to believe that she was ignorant of the import thereof. And it can not be true that the sums of ₱700 and ₱1,500 represented the accumulated usurious interests, because appellant herself admitted that she had received these sums. She said:

"Q. Showing you these documents evidencing the said loans which were marked accordingly as Exhibit A, the contract of mortgage, original, and Exhibit E, which is the contract of loan of ₱700, and a supplemental mortgage which was marked as Exhibit G, there are signatures thereon over the typewritten name Felicidad Dagan de Arcino was mortgage. In Exhibit A, is that your signature?—A. Yes, sir; I accepted the ₱700 and ₱1,500." (t. s. n., 29.)

In this connection, appellant insinuates that the allegation of usury made by her in her answer, not having been specifically denied under oath by appellee, the same is deemed admitted. (Act No. 2655, as amended, and section 8, Rule 9). This presumption of law in the question of pleadings has been overcome by the admission of the appellant that she had received or accepted, to use her own language, the sums of ₱700 and ₱1,500 (t. s. n., 29, *supra*). Presumptions should give way to admissions freely made and to solid facts. Appellant claims that she had made a partial payment of ₱350 on August 30, 1950, through her sister Leonida Dagan to the mother-in-law of appellee. The absence of a receipt for this substantial amount belies the claim, considering the fact that receipts were properly issued by either the appellee or his wife on all other payments made by the appellant.

And lastly, appellant contends that the award in the sum of ₱500 in favor of appellee for attorney's fees, was

not justified, because the defendant had a just and valid ground for refusing to satisfy plaintiff's usurious claims. In view, however, of the conclusion reached by this Court, and of the fact that the contract provides for attorney's fees (Exhibit E); that appellant's refusal to pay was groundless; that because of her act, she practically dragged the plaintiff into filing the present suit and to hire the services of a lawyer to defend him; and that in the conduct of the case, some labor, time and trouble were involved, as shown by the records of the case, an attorney's fees in the sum of ₱500, fixed by the trial court, is deemed reasonable.

Wherefore, the judgment appealed from hereby is affirmed, with costs against the appellant. So ordered.

De Leon and *Natividad, JJ.*, concur.

Judgment affirmed with costs against the appellant.

[No. 11336–R. May 18, 1954]

CONSOLACION SERAFICA, petitioner and appellant, *vs.* THE PHILIPPINE NATIONAL BANK, respondent and appellee

PLEADING AND PRACTICE; JUDGMENT; CONDITIONAL JUDGMENT; APPEAL FROM A CONDITIONAL JUDGMENT IS PREMATURE.—A judgment which does not decide finally the rights of the parties upon the issues submitted, by specifically denying or granting the remedy sought by the action, thus leaving matters to be settled for its completion in a subsequent proceeding, or which does not make a finding of all the facts presented by the pleadings and supported by the proofs, is a conditional judgment and any appeal therefrom is premature.

APPEAL from a judgment of the Court of First Instance of La Union. Gonzales, *J.*

The facts are stated in the opinion of the court.

Juan Gualberto for petitioner and appellant.
Ramon B. de los Reyes for respondent and appellee.

PAREDES, *J.:*

This is a mandamus proceeding instituted by the petitioner Consolacion Serafica in the Court of First Instance of La Union, for the purpose of compelling the respondent Philippine National Bank to restore the balance of her pre-war current account deposit allegedly in the sum of ₱3,475.03, and to allow her to withdraw the same. The respondent filed a motion to dismiss, on the ground that the right which the petitioner sought to enforce by mandamus was not well-defined, clear and complete, but was in substantial dispute, and, therefore, not within the remedial scope of such action. The motion to dismiss was, however, denied. The respondent filed an answer, admitting certain allegations of the petition, and denying others. After due hearing, the Court of First Instance of La Union dismissed the petition. Hence, this appeal.

After reproducing or quoting *in toto* the petition, the motion to dismiss, the opposition to the motion to dismiss, the motion for reconsideration of the resolution denying the motion to dismiss, the answer to the petition, the memorandum of Consolacion Serafica and the memorandum for the respondent, the trial court ended its decision with the following dispositive portion thereof:

"The court has in mind that the petitioner might have somewhere some records of the stubs of her check book. That the claim of petitioner would be the result of the accounting of the stubs of her check book. The court believes that with the absence of the check stubs of the plaintiff or the previous statement of her account from the bank, the bank is not in duty bound to recognize her claim and the court finds justified the attitude of the bank in not recognizing her claim.

"In view of all the foregoing, the claim of the petitioner is temporarily dismissed without pronouncement as to costs. The petitioner is hereby enjoined to search for her previous records especially the stubs of her check book and any of the previous statement of her account sent by the Bank, and she is given the period of 1 year from the date of this decision to renew her claim with those sufficient evidence above mentioned, otherwise the temporary dismissal of her claim and petition will be definite, and the case closed and terminated after said one year period. "So ordered."

"A judgment must be definitive. By this is meant that the decision itself must purport to decide finally the rights of the parties upon the issue submitted, by specifically denying or granting the remedy sought by the action." (33 C. J., 1102) "And when a definitive judgment can not thus be rendered, because it depends upon a contingency, the proper procedure is to render no judgment at all and defer the same until the contingency has passed." (Cu Unjieng e Hijos *vs.* The Mabalacat Sugar Co., et al., 70 Phil., 380) (Conditional judgment * * * is not final and cannot be executed and is held by some courts to be null and void, for it settles nothing in the meantime, the award being dependent upon the happening of a future event. In such case, it is better not to render any judgment at all until the future event has happened." (I Moran's Rules of Court (1952 ed.), pp. 695, 697.) "* * * Thus the judgment rendered by Judge Felix has never become final, it having left matters to be settled for its completion in a subsequent proceeding, matters which remained unsettled up to the time the petition is filed in the instant case." (Ignacio *vs.* Hilario, 76 Phil., 605, 608–609.) Gauged by these standards, therefore, the temporary dismissal by the court below of the present case, and the injunction made by it for the petitioner-appellant "to search for her previous records, especially the stubs of her check book and any of the previous statement of her account sent by the Bank", and the chance given to the said peti-

tioner-appellant within "the period of 1 year from the date of this decision to renew her claim with those sufficient evidence above mentioned, otherwise the temporary dismissal of her claim and petition will be definite and the case closed and teminated after said one year period," is manifestly not definitive. Not being final, any appeal on the part of the plaintiff is premature. As stated: "In such case, it is better not to render any judgment at all until the future event has happened," which, in this particular case, is the expiration of the one year grace granted by the court *a quo*. The dispositive part of the decision itself, shows that the case is not definite.

"It is the duty of the lower court to make a finding of all facts presented by the pleadings and supported by the proof" (Aringo *vs.* Arena, 14 Phil., 263, 266). And where a judgment fails to make findings of facts, the case may be remanded to the trial court for the making of such findings" (I Moran's Rules of Court (1952) ed.), p. 695). In the case of Alindogan *vs.* The Insular Government (15 Phil., 168–170), the lower court rendered the following judgment:

"The court, having received and considered all the evidence adduced by the petitioners and being fully informed of everything connected with this case, finds that the petitioners have legally acquired their title, and are the absolute owners in equal parts pro-indiviso of the land in question."

"Therefore, the opposition of the Director of Lands is overruled, and, after a declaration of general default, let the adjudication and registry of said land in favor of the petitioners be decreed, subject to an easement of way acknowledged by the petitioners and marked on the plan as 'a way made by the owners'."

The Supreme Court, after an examination of the above judgment, declared that the trial judge "made no finding of facts whatsoever upon which he based his conclusion." The judgment subject to the present appeal, as heretofore quoted, like the Alindogan case, just cited, does not make a finding of all the facts presented by the pleadings and supported by the proofs. There is also a failure to state clearly and distinctly the law on which the trial court based its ruling in dismissing the proceeding. (Section 1, Rule 35.)

In view hereof, the case is remanded to the trial court, for further proceedings, with instructions to render a more definitive judgment. Without special pronouncement as to costs. So ordered.

De Leon and *Natividad, JJ.*, concur.

Case remanded to the trial court, for further proceedings with instructions.

[No. 11107–R. June 14, 1954]

THE CITY OF MANILA, plaintiff and appellee, *vs.* DOMINGO GUEVARRA, defendant and appellant

1. CITY; POWER TO LEASE PUBLIC STREET.—The City of Manila has no authority to lease a public street within its boundaries to a private person, and whatever contract, written or verbal, it may have made leasing such property is null and void. (Municipality of Cavite *vs.* Rojas, 30 Phil., 602; Muyot *vs.* De la Fuente, 48 Off. Gaz., 4866).
2. ID.; PUBLIC STREET; OCCUPATION OF PUBLIC STREET WITHOUT PERMIT; CITY'S RIGHT TO CHALLENGE ACT OF USURPTION.—The occupation of a public street in the City of Manila without any permit from its duly constituted authorities constitutes an act of usurpation which it has a right to challenge beginning from the date of occupation (Mediran *vs.* Villanueva, 37 Phil., 752; Santos *vs.* Santiago, 48 Phil., 567; Schultz *vs.* Concepcion, 32 Phil., 1). The character of such usurpation is not changed by the act of the City Treasurer in requiring the occupant to pay, and in accepting from him, compensation for the use and occupation of the premises. There can be no estoppel as against a municipal corporation with respect to matters which are not within the scope of its power and authority to act. (38 Am. Jur., 374).
3. ID.; ID.; ID.; EJECTMENT; ACCRUAL OF ACTION.—The right of the City of Manila to bring against persons illegally occupying its public street actions of ejectment is beyond question (18 Am. Jur., 18). Such right of action accrues from the time the illegal usurpation of the premises began.
4. ID.; ID.; ID.; ILLEGAL OCCUPANT NOT ENTITLED TO RESTITUTION OF RENTS PAID; CASE AT BAR.—The illegal occupation of a public street or a portion thereof does not confer upon the occupant any right which should be protected by law. Such occupant is not entitled as of right to the rents he had paid therefor. The rule that requires the refund of money paid to another by mistake or without authority of law is founded upon the general obligation to do justice rather than upon contractual obligation. Where, as in the instant case, no injustice would be committed against the occupant if what he had paid for the use and occupation of the premises is not refunded to him, for he has enjoyed the use and occupation of the premises and there is no claim that the compensation he has paid for such occupation was not just, restitution of rents paid should not be ordered.

APPEAL from a judgment of the Court of First Instance of Manila. Gatmaitan, *J.*

The facts are stated in the opinion of the court.

Vicente Roco, Jr. for defendant and appellant.

City Fiscal Eugenio Angeles and *Assistant Fiscal Artemio H. Cusi* for plaintiff and appellee.

NATIVIDAD, *J.:*

This case has been brought to compel the defendant to vacate a portion of a public street in the district of Sta. Cruz, City of Manila, containing an area of around 30 square meters, and to pay to the plaintiff the sum of ₱150 as reasonable compensation for the use and occupa-

tion thereof for the period May to September 1952, plus ₱30 a month from October 1952 until the same is finally vacated.

The defendant resists the action on the ground that he is occupying the portion of the street referred to in the complaint with the consent of the plaintiff to which he has been paying as rents therefor ₱30 a month since October 1948 down to September 1952, and that if the rents for the subsequent months have not been paid, it was due to the refusal of the plaintiff to receive them. Defendant, therefore, asks that he be absolved of the complaint, or, in the event that it should be found that the plaintiff had no right to lease to him the premises, that judgment be rendered requiring the former to reimburse him the rents he had so far paid therefore which amounted to ₱1,290, and to pay him the further sum of ₱600 as reasonable value of the improvements he had introduced therein.

After trial, judgment was rendered ordering the defendant to vacate the premises involved in the case and to pay to the plaintiff the sum ₱30 a month beginning May 1952 until the former shall have finally vacated the same, and dismissing the latter's counter-claim with costs. From this judgment, the defendant appealed.

The evidence shows that sometime in the month of October 1948, the defendant, Domingo Guevarra, without any permit from the authorities of the City of Manila, occupied a portion of about 30 square meters of Callejon V. de los Reyes, Sta. Cruz, Manila, which was a public street. He filled the premises, laid a concrete cement layer on its surface and constructed thereon a shed which cost him around ₱600. The City authorities did not discover this illegal occupation of the street until after the construction of the shed had been completed. After its discovery, however, the City Treasurer, instead of demanding that the defendant vacate immediately the premises required him to pay the amount of ₱30 a month beginning October 1948 as reasonable compensation for the use and occupation thereof. The defendant acceded to this demand and paid ₱30 a month for the occupation of the premises from October 1948 to April 1952, or a total of ₱1,560. His offer, however, to pay the monthly dues for the succeeding months was refused by the City Treasurer, who on January 7, 1952, wrote him a letter requiring him to vacate the premises within ten days and to pay the "concession fees" due thereon from January 1952 until he vacates the same at the rate of ₱30 a month. The defendant refused. Hence, this action.

The main contentions of the appellant are two-fold, to wit: First, that the trial court erred in taking cognizance of this appeal in the exercise of its original jurisdiction; and second that the trial court erred in not

sentencing the appellee to reimburse him the sum of ₱1,560 he had paid so far as rents for the premises in question, and to pay him the sum of ₱600 as damages.

It is contended under the first proposition that while the occupation by the appellant of the premises in question began without any authority from the appellee, nevertheless such occupation became one of a lessee from the time that the latter discovered it and required him to pay rent therefor at the rate of ₱30 per month, which he did. Hence, appellant argues, the cause of action of the appellee to eject him from the premises, if any, must be deemed to have commenced in April 1952 when the latter refused to receive payment of the rents therefor, and, consequently, this action of unlawful detainer, which was brought on September 23, 1952, should have been brought in the Municipal Court for the City of Manila which had original jurisdiction over it.

We do not share appellant's view. This action has been properly brought in the Court of First Instance of Manila. The premises in question being a part of a public street, the appellant's occupation thereof in October 1948, without any permit from the city authorities, constituted an act of usurpation which the appellee, as legal possessor, had a right to challenge beginning that date. (Mediran *vs.* Villanueva, 37 Phil., 752; Santos *vs.* Santiago, 48 Phil., 567; Shultz *vs.* Concepcion, 32 Phil., 1.) The character of this usurpation has not been changed by the act of the City Treasurer in requiring the appellant to pay, and in accepting from him, compensation for the use and occupation of the premises. The City of Manila had no authority to lease a public street to a private person, and whatever contract, written or verbal, it may have made leasing such property is null and void. (Municipality of Cavite *vs.* Rojas, 30 Phil., 602; Muyot *vs.* De la Fuente, 48 Off. Gaz., 4866.) Moreover, there can be no estoppel as against a municipal corporation with respect to matters which are not within the scope of its power and authority to act (38 Am. Jur., 374). The right, therefore, of the City of Manila to bring against the appellant this action of ejectment, which cannot be questioned (18 Am. Jur., 18) accrued from the time the illegal usurpation of the premises began.

Appellant contends under the second proposition that as the trial court held that the lease of the premises in question to him was null and void *ab initio* for the City of Manila had no power to grant it, under the doctrine laid down in the case of Municipality of Cavite *vs.* Rojas, *supra*, it should have ordered the plaintiff to return to him the rents he had so far paid therefor which amounted to ₱1,560.

Again we differ from appellant's view. In the first place, the doctrine laid in the case invoked by him has no application to the case at bar. For unlike in the instant case, in which the appellant occupied a portion of a public street without any authority from the City of Manila, in that case the defendant was placed in possession of a portion of a public plaza by the municipality of Cavite under a formal contract of lease. Defendant's occupation, therefore, of a portion of a public plaza in the municipality of Cavite case was with some color of title, while defendant's occupation of a portion of a public street in the instant case was illegal and without any color of right. Hence, while it was but just in the former case that upon the annulment of the deed under which such occupation of a portion of a public plaza was enjoyed the contracting parties be restored to their original conditions before the contract by mutual restitution (Art. 1398, Civil Code), No such remedy could be granted defendant in the latter case, for his illegal occupation of a portion of a public street did not confer on him any right which be protected by law. Moreover, the rule that require the refund of money paid to another by mistake or without authority of law is founded upon the general obligation to do justice rather than upon contractual obligations. In the instant case, no injustice would be committed against appellant if what he had paid for the use and occupation of the premises is not refunded to him. He had enjoyed the use and occupation of the premises, and there is no claim that the compensation he had paid for such occupation was not just.

We are, therefore, of the opinion that the judgment appealed from is in accordance with law and supported by the evidence. Hence, the same is hereby affirmed, with the costs taxed against the appellant.

It is so ordered.

Paredes and *De Leon, JJ.*, concur.

Judgment affirmed.

[No. 7050-R. June 18, 1954]

ENRIQUE F. OCHOA, plaintiff and appellant, *vs.* JOAQUIN LOPEZ, defendant and appellee

1. OBLIGATIONS AND CONTRACTS; CREDITOR AND DEBTOR; PREMATURE PAYMENT; DEBTOR WITHOUT RIGHT TO ACCELERATE TIME FOR PAYMENT.—The payment of interests is not the only reason why a creditor may not be bound to receive before maturity. As stated in Jose Ponce de Leon *vs.* Santiago Syjuco, Inc., et al., G. R. No. L-3316, October 31, 1951, there may be other reasons, to wit: "that the creditor may want to keep his money invested safely instead of having it in his hands (Moore *vs.* Cord, 14 Wis. 231)" and "that the creditor, by fixing a period, protects himself against sudden decline in

the purchasing power to the currency loaned specially at a time when there are many factors that may influence the fluctuation of the currency (Kemmerer on Money, pp. 9–10). "And all available authorities on the matter are agreed that, unless the creditor consents, the debtor has no right to accelerate the time of payment even if the premature tender 'included an offer to pay principal and interest in full' (117 A. L. R. 866–867; 23 L. R. A. [N. S. 403])".

2. ID.; ID.; ID.; ACCEPTANCE OF PARTIAL PAYMENT BEFORE MATURITY OF OBLIGATION, EFFECT; CASE AT BAR.—The acceptance of the partial payment in the mortgage contract where it was provided that the debtor cannot pay the principal before the expiration of the period of two years therein stipulated, was not a novation of the contract, but it was undoubedtedly a waiver by the creditor of the aforesaid term of two years. It was a relinquishment of his right to refuse any payment before the expiration of said term. No explanation having been given why the creditor received said partial payment before the maturity of the obligation, it may be presumed that his relinquishment was intentional and his choice to dispense with the term, voluntary. It was not a mere forebearance. (56 Am. Jur., pp. 102, 104, 107 and 113.)

3. ID.; ID.; ID.; CONSIDERATION; NOTICE; NATURE; CONTENTS, AND PURPOSE OF NOTICE.—The purpose of the notice is to give the creditor,—upon receiving formal notice that consignation would be made,—a chance to reflect on his refusal to accept payment in view of the adverse consequences that such consignation might work against him, such as the release of the debtor from liability, the risk of loss of the thing consigned and the payment by him of the expenses of consignation which includes the commission of the amount deposited to be paid to the Clerk of Court, etc. Such being the object of the previous notice, it stands to reason that the same should not contain a mere warning that the deposit of the thing tendered would be made in court but it should fix the date and hour of the consignation and the name of the court where the same would be made. (Manresa, Vol. 8, pp. 298–299; Camilo Diego de Lora's "La Consignación Judicial, Estudio Teórico Practico", pp. 50–51; Scaevola, Vol. 19, pp. 930–931).

4. ID.; ID.; ID.; ID.; ID.—It is but logical that the notice should mention the date and place of the consignation, otherwise its purpose of giving the creditor an opportunity to reconsider his position would be rendered nugatory. If the debtor files the complaint and makes the consignation at any time he chooses, without informing the creditor beforehand of its date, the latter loses forever his chance to avoid the adverse effects of the consignation, the payment of the expenses thereof plus the costs of the suit.

APPEAL from a judgment of the Court of First Instance of Manila. Liwag, *J.*

The facts are stated in the opinion of the court.

Jose V. Rosales for plaintiff and appellant.
Ramirez & Ortigas for defendant and appellee.

GUTIERREZ DAVID, *J.:*

On August 26, 1943, plaintiff-appellant Enique F.Ochoa executed in favor of defendant-appellee Joaquín López

document, Exhibit 1, whereby he mortgaged his property, located at No. 17 Calle San José, Intramuros, Manila, and covered by Transfer Certificate of Title No. 3621 of the Register of Deeds of Manila as security for the payment of a loan in the amount of ₱15,000 in Japanese military notes to be paid, among other conditions, as follows:

"1. Devolvería dicha cantidad en el plazo de 2 años, a contar desde la fecha de esta escritura, cuyo plazo se estipula estrictamente en beneficio recíproco del deudor y del acreedor. De tal manera que al deudor no podrá pagar al acreedor el capital ni parte del mismo, antes de la expiración del plazo, aunque ofrezca pagar los intereses correspondientes al período no transcurrido de dicho plazo; y de igual manera, al acreedor tampoco podrá exigir el pago del capital de este préstamo antes del plazo convenido. Esta cláusula se considera como una condición especial y esencial de este contrato, que forma parte de su consideración legal, pues sin ella las partes contratantos no hubieran aceptado este contrato.

"2. Pagará sobre la mencionada cantidad intereses razón de 5 por ciento anual, pagaderos por semestres vencidos en la residencia del acreedor y sin necesidad de requerimiento." (R. on A., pp. 21–22).

On March 1, 1944, plaintiff-appellant paid the defendant-appellee the sum of ₱375 as interest on the principal of the aforesaid loan for the period from August 26, 1943 to February 25, 1944 (Exhibit J) and on June 12, 1944 he paid ₱5,000 also in Japanese war notes, on account of the principal for which the defendant-appellee executed receipt Exhibit I reading as follows:

"Received from Dr. Enrique F. Ochua the sum of ₱5,000, Philippine currency, as part payment of a loan which I conceded to him in a mortgage contract which he signed on the 26th of August, 1943, mortgaging his property located at 17 S. José, Intramuros, Manila. With this payment, the balance of the loan conceded to him as per said mortgage contract of the 26th of August, 1943, is ₱10,000.

Manila, June 12, 1944."

On August 25, 1944 plaintiff-appellant made another payment in the sum of ₱323.62 on account of interest for the period from February 26, 1944 to August 26, 1944 (Exhibit K).

Plaintiff-appellant claimed that on October 2, 1944 and on several occasions prior thereto he tendered to defendant-appellee the payment in cash of the balance of his indebtedness in the amount of ₱10,000 with the corresponding interests, but the latter refused to accept it on the ground that it was against the terms of the aforesaid deed of mortgage; that in view of such refusal plaintiff-appellant apprised the defendant-appellee that proper consignation would be made in court and that, accordingly, a complaint was filed with the Court of First Instance of Manila, docketed as Civil Case No. 2907 accompanied by the deposit of the amount of ₱10,631.50 as shown by the receipt, Exhibit L. Defendant-appellee

was properly served with the summons in that case on October 7, 1944 the original of said process having been returned to the court on October 9, 1944 (Exhibit E). The said civil case was never tried nor its record ever reconstituted after its destruction during the battle for the liberation of the City of Manila.

Several demands of plaintiff-appellant from the defendant-appellee to cancel or release the mortgage contract in question having failed, the former commenced this action on January 13, 1950 before the Court of First Instance of Manila with the prayer that the tender of payment and consignation made by plaintiff to defendant in the amount of ₱10,000 on October 7, 1944 be declared as full and complete payment of plaintiff's obligation on the mortgage in question; that the cancellation of said mortgage contract be ordered and that defendant-appellee be condemned to pay the costs of the suit.

The defendant-appellee pleaded the defense that the alleged consignation of the balance of the mortgage debt together with interest for the unexpired period of the term and incidental expenses in the execution of the deed and release had not been validly made; and set up a counterclaim and countercomplaint seeking for a judgment ordering the plaintiff-appellant to pay the mortgage debt of ₱10,000 still due, together with the stipulated interests and attorney's fees, and, upon failure of the plaintiff-appellant to deposit the judgment debt in court within 90 days, that the mortgaged property be sold in the manner provided by law.

Finding, among others, that the alleged consignation was not valid and did not discharge plaintiff's mortgage obligation for it was made when the debt was not yet due and upholding the legality and validity of the above-quoted provisions of the mortgage contract to the effect that plaintiff as debtor cannot pay the principal before expiration of the period of 2 years therein stipulated, the court below rendered judgment absolving the defendant-appellee of plaintiff-appellant's complaint and sentencing the latter to pay to the former the sum of ₱10,000.00 with interests at the rate of 5 per cent per annum from January 26, 1950 and the further sum of ₱2,707.90 as accrued interests, with interest at the legal rate from January 26, 1950, and the further sum of 10 per cent on the principal amount as and for attorney's fees, plus the costs, and ordering the plaintiff-appellant to make said payment within 90 days, and upon his default, the mortgaged property shall be sold as provided in the Rules of Court.

From said judgment plaintiff-appellant interposed this appeal claiming that the court below committed the following errors: (1) in not declaring that the period stipulated in the mortgage contract in question was constituted

for the exclusive benefit of the debtor, the appellant herein; (2) in not construing the obscure terms of the mortgage contract in question in favor of the debtor; (3) in construing the acceptance of the partial payment made by the appellant in the sum of ₱5,000 and the payment of the interest based on the balance of the indebtedness, as forbearance, and not as waiver of the period stipulated; (4) in not declaring valid the tender and consignation made by the appellant of the balance of the indebtedness and the interest for the unexpired period of the term; (5) in holding that the appellee refused to accept the tender made by the appellant of the balance of the indebtednehs and the interest for the unexpired period of the term, as it was against the terms of the deed of mortgage, and that the refusal was reasonable and lawful; (6) in holding that the consignation made by the appellant did not discharge his mortgage obligation; and that the obligation is still subsisting and the appellant is bound to the payment thereof; (7) in absolving the appellee of the appellant's complaint and sentencing the appellant to pay the appellee the sum of ₱10,000 with interest at the rate of 5 per cent per annum from January 26, 1950 and the further sum of ₱2,707.90, as accrued interest, with interest at the legal rate from January 26, 1950 and the further sum of 10 per cent on the principal as and for attorney's fees and the costs: (8) in ordering the appellant to pay the aforesaid amounts unto the court within 90 days from services upon him of the decision and, in default of such payment, the mortgaged property shall be sold as provided in section 3 of Rule 70 of the Rules of Court with the right of the appellee to recover deficiency judgment under Section 6 of the said rule; (9) in not applying the Ballantyne scale of values in its award of the appellee's counterclaim; and (10) in not dismissing the appellee's counterclaim and entering a judgment in favor of the appellant, granting the relief as prayed for in the appellant's complaint.

After an examination of the record we arrived at the following conclusions:

1. From the clear and unequivocal provisions of the mortgage contract, Exhibit 1, it is obvious that the intention and agreement of the parties were that the debtor could not pay the whole or a part of the principal of the mortgage indebtedness before the expiration of the stipulated period of two years counted from the date of the deed, August 26, 1943, even though he offered to pay the interests due until the date of maturity, and that such stipulation was made for the benefit of both the creditor and the debtor as the contract expressly recites.

Appellant's contention to the effect that it was the payment of interests agreed upon and not the period stipulated that predominated the mortgage contract in so

far as the creditor was concerned and that said period of two years solely served as basis for computing the interests, is belied by the clear and express stipulation in the contract in the sense that the clause regarding the period or payment is considered "como una condición especial esencial en este contrato, que forma parte de su consideración legal, pues sin ella las partes contratantes no hubieran aceptado este contrato" (Exhibit I).

It should be noted that the payment of interests is not the only reason why a creditor may not be bound to receive payment before maturity. As stated in José Ponce de León *vs.* Santiago Syjuco, Inc., et al., G. R. No. L–3316, October 31, 1951, there may be other reasons to wit: "that the creditor may want to keep his money invested safely instead of having it in his hands (Moore *vs.* Cord. 14 Wis. 231)" and "that the creditor, by fixing a period, protects himself against sudden decline in the purchasing power of the currency loaned specially at a time when there are many factors that influence the fluctuation of the currency (Kemmerer on Money, pp. 9–10). "And all available authorities on the matter," said the Supreme Court in that case, "are agreed that, unless the creditor consents, the debtor has no right to accelerate the time of payment even if the premature tender "included an offer to pay principal and interest in full' (17 A. L. R. 866–867; 23 L. R. A. (N. S.) 403".

No allegation and showing of mistake having been made by plaintiff as regards the terms of the contract, Exhibit 1, the above-quoted unambiguous stipulations thereof should be held conclusive.

2. The acceptance of the partial payment in the sum of ₱5,000 made by the plaintiff-appellant on June 12, 1944 (Exhibit I) was not a novation of the contract, but it was undoubtedly a waiver by defendant-appellee of the aforesaid term of two years. It was a relinquishment of his right to refuse any payment before the expiration of said terms. No explanation having been given why defendant-appellee received said partial payment before the maturity of the obligation, it may be presumed that his relinquishment was intentional and his choice to dispense with the term, voluntary. It was not a mere forbearance. (56 Am. Jur. pp. 102, 104, 107 and 113

3. The alleged consignation made by plaintiff in court on October 7, 1954 (Exhibit L) was ineffective because there was no proper and satisfactory showing that plaintiff had complied with the requisite of previous notice of the consignation to be made to persons interested in the performance of the obligation, as required by article 1177 of the old Civil Code:

"In order that the consignation of the thing due may release the obligor, notice thereof must be previously made to the persons interested in the fulfillment of the obligation.

Consignation shall be inefficacious if not made strictly in accordance with the provisions governing payment."

What plaintiff testified regarding this previous notice was:

"P. Qué hizo usted, hizo usted eferta de pago de los ₱10,000, capital e intereses, antes de hacer el depósito?—R. El julio de 1944, o sea un mes después de hacer el pago de los ₱5,000 en que yo empecé a ofracer el balance de los ₱10,000 al Sr. Joaquín López, yo le he ofrecido repetidamente mi oferta hacia el mes de julio pero él no quería recibir mi oferta de pago del resto de ₱10,000 y me dijo que yo debia continuar usando ese dinero en mi negocio. Yo le ofrece otra vez mi oferta el mes de agosto de 1944, y también el mes de septiembre, y yo le escribi hacia fines del mes de septiembre pidiéndole que aceptara el resto de ₱10,000 a fin de poder librarme de mi obligación y preocupación de tener en mi poder mucha cantidad de dinero, y le dije igualmente que si él dejara de aceptar mi ofracimiento de pago, que yo iba a depositar la cantidad en el Juzgado. Como yo no he recibido ninguna contestación de él, yo deposité la cantidad en el juzgado."—(t. s. n. pp. 17–18).

"* * * * * * *"

"R. Al principio era verbal y, más tarde, yo le escribí carta pidiéndole que aceptara los ₱10,000 como pago completo de mi obligación, porque si él no lo aceptaba yo pensaba depositar dicha cantidad en el Juzgado como en efecto lo he depositado.

"P. Recuerda usted la fecha de esa carta?—R. Creo que era el 2 de octubre de 1944.

"P. Tiene usted copia de esa carta?—R. No. tengo copia de esa carta." (t. s. n. p. 28).

Defendant-appellee denied having received a tender of payment in writing and much less a notice that the amount tendered would be deposited in court.

"P. En Sr. Ochoa ha declarado aquí que en los meses de julio, agosto y septiembre y octubre él ofreció a usted varias veces pagar la suma de ₱10,000 saldo de su hipoteca, es eso cierto o no?—R. No, señor.

"P. Cuál es la verdad?—R. El me habló de ese asunto pocos días antes de presentar la demanda en septiembre 29 de 1944.

"P. Como le hizo a usted esas ofertas de pago?—R. Verbalmente.

"P. Alguna vez le ha hecho alguna oferta por escrito el Sr. Ochoa?—R. En ninguna vez.

"P. El Sr. Ochoa ha declarado aquí el día 2 de octubre de 1944 le entrego a usted una carta en manuscrito ofreciéndole el pago y anuneiándole que, en caso contrario, él depositaría la cantidad en el Juzgado; es verdad eso o no?—R. Concretamente falso.

"P. Alguna vez le ha notificado el Sr. Ochoa de que él iba a presentar una demanda y que iba a depositar la cantidad en el Juzgado?—R. No, señor.

"P. Cuándo se enteró usted por primera vez de que había tal demanda y tal depósito?—R. Cuando recibí ya los papeles del Juzgado. Cuando recibí la demanda.

"P. Quiere usted decir la demanda con el emplazamiento del Juzgado?—R. No, señor.

"P. Y cuando fué eso?—R. Fué después del septiembre 29 de 1944.

"P. Pedro durante el año 1944?—R. Durante el año 1944."—(t. s. n. pp. 22–35).

It is our view that the foregoing evidence on the previous notice is utterly insufficient and unsatisfactory. Such notice, being so important and indispensable for the validity of the consignation, should be established by clear and positive proofs. It appears in the quoted testimony of plaintiff-appellant, on cross-examination, that he simply had told the defendant that he intended ("pensaba") to deposit in court the amount tendered. From the testimony of plaintiff-appellant there is no way of ascertaining how the notice was worded or whether it served the real purpose of the previous notice. No term was given to the creditor within which to answer whether he accepts the tender of payment or after which the consignation would be made.

Moreover, there seems to be a misconception on the part of practising attorneys and some courts in this jurisdiction regarding the true nature and purpose of the previous notice. Seemingly they believe that it is sufficient for the creditor to state in the notice that he would deposit or consign in court the amount of payment offered, should it be refused by the debtor. According to Manresa, the law requires the previous notice "atendiendo a que es aviso más serio de consecuencias que tal vez venzan resistencias injustificadas y, atendiendo, por ortra parte, a que la consignación exija que se prevengan para hacer valer los derechos que con la misma se relacionen, aquellos que puedan tenerlos." (Vol. 8, pp. 298–299) Camilo Diego de Lora, Doctor of Laws, in his interesting and exhaustive work entitled "La Consignación Judicial, Estudio Teórico-Fráctico" printed in Barcelona, Spain, in 1952, referring to the nature and purpose of the previous notice, had this to say:

"Junto al ofrecimiento, y después de él, el deudor, antes de comenzar el proceso, tendrán que proceder el aviso, a los interesados en la obligación, de su intención de consignar.

1.°—Naturaleza

"Así como el ofrecimiento es un acto privado y amistoso, opina Manresa (69), el aviso tiene un caracter intimidativo. En efecto, el ofrecimiento de pago es la expresión formal y real de la voluntad del deudor a cumplir, productora de determinados efectos jurídicos; solo pretende demonstrar que el deudor, en el momento oportuno, realizó los actos necesarios para extinguir su obligación, y que si ésta permanece es por la negativa del acreedor.

"Al legislador español le repugnaba que el deudor, para efectuar su obligación, tuviera que acudir a unos trámites procesales, sin que hubiera intentado previamente la extinción mediante el modo normal de pago. Frente a la oposición del acreedor exige que conste de modo notorio ese involuntario impago por parte del deudor. Ante la constancia de la negativa del acreedor, regula el medio de liberación judicial.

"Antes, para mayor seguridad de la necesidad del proceso y como un último intento de avenencia, a fin de que el acreedor pueda rectificar su conducta; y, al mismo tiempo, para evitar

perjuicios a terceros a los que puedan interesar impedir que el deudor agote la vía judicial, habrá de avisar, tanto el acreedor como a los demás interesados en la obligación, la intención de acudir a los trámites procesales de la consignación." (p. 48)

Thus the purpose of the notice is to give the creditor,—upon receiving formal notice that consignation would be made,—a chance to reflect on his refusal to accept payment in view of the adverse consequences that such consignation might work against him, such as the release of the debtor from his liability, the risk of loss of the thing consigned and the payment by him of the expenses of consignation which includes the commission of the amount deposited to be paid to the Clerk of Court, etc. Such being the object of the previous notice, it stands to reason that the same should not contain a mere warning that the deposit of the thing tendered would be made in court but it should fix the date and hour of the consignation and name the court where the same would be made.

According to Mucius Scaevola the notice should contain the following:

"Los terminos del anuncio se entiende bien que han de comprander:

1.° El deseo del deudor de hacer llegar a noticia de las personas interesadas su propósito de realisar el pago de lo que debe.

2.° El señalamiento del día y de la hora fijados de antemano por la authoridad judicial en que la consignación deberá ser hecha, a fin de que dichas peronas pueden conocerlos con la anticipación necesaria y tomar en su caso las medidas que consideren procedentes. Deberá, por lo mismo, mediar entre la publicación del auncio y al día de la consignación tiempo suficiente para que llegue a noticia de dichas personas siguiendo en este el Juez lo que también se dispone en la Ley de Enjuiciamiento civil con relación a los emplazamientos para contestar a una demanda.

Por fin, llegará el día, y la consignación, como determina el artículo 1178, se hará depositando las cosa debidas a disposición de la autoridad judicial." (Vol. 19, pp. 930–931).

and Diego de Lora, in the above-cited work, says that the following should appear in the notice:

"El aviso ha de comprender:

Primero, que precedió el ofrecimiento de pago en su caso y negativa del acreedor; o bien, expresión de haberse hecho innecesario en atención a las circumstancias en que se encuentre el crédito, conforme lo perceptuado en la Ley.

Segunda, expresión de la voluntad del deudor de verificar la consignación por vía judicial.

Tercero, señalamiento de un plazo mínimo, transcurrido el cual la consignación se reslizará, a fecha aproximada en que será practicada.

Cuarto, autoridad judicial ante quien se hará.

Y quinto, manifestación del deseo que estas notícias lleguen a los interesados a quienes se avisa." (pp. 50–51).

It is but logical that the notice should mention the date and place of the consignation, otherwise its purpose of giving the creditor an opportunity to reconsider his posi-

tion would be rendered nugatory. If the debtor files the complaint and makes the consignation at any time he chooses, without informing the creditor beforehand of its date, the latter loses forever his chance to avoid the adverse effects of the consignation, the payment of expenses thereof plus the costs of the suit.

In the instant case there is no showing that plaintiff-appellant has complied with said requirement.

4. Defendant-appellee having waived, on June 12, 1944, his right to the term of two years agreed upon in the contract (Exhibit 1), the obligation under consideration became payable since June 13, 1944 and during the Japanese military occupation. Hence, conformably with the ruling of the Supreme Court, it should be revalued on the basis of the relative value of the Japanese Military notes in Philippine genuine currency on June, 1944, under the Ballentyne sliding scale of values, which was 15 to 1.

Wherefore, with the modification that all the amounts awarded in the appealed judgment shall be reduced to its equivalent in actual Philippine currency in the proportion of 15 to 1, the judgment below is hereby affirmed in all other respects, without costs.

Rodas and *Martinez, JJ.*, concur.

Judgment modified.

[No. 8796-R. June 18, 1954]

The PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ARSENIO SUNICO, LOREZO SUMAGIT, ARSENIO C. JACOBO MARCOS ABUYUAN and FELIPE BACLIG, defendants. ARSENIO SUNICO, LORENZO SUMAGIT and ARSENIO C. JACOBO, defendants and appellants.

CRIMINAL LAW; VIOLATION OF SECTIONS 101 AND 103, REVISED ELECTION CODE; OMMISSION TO INCLUDE VOTER'S NAME IN ELECTORAL LIST; MALICE ESSENTIAL.—The acts prescribed in sections 101 and 103 of the Revised Election Code and penalized by sections 183 and 185 of said Code cannot be merely *mala prohibita*—they are *mala per se*. The omission or failure to include a voter's name in the registry list of voters is not only a wrong because it is prohibited; it is wrong *per se* because it disfranchises a voter and violates one of his fundamental rights. The acts are not rendered immoral merely because they are forbidden by positive law; they are inherently immoral by themselves. Hence, for such acts to be punishable, it must be shown that they have been committed with malice.

APPEAL from a judgment of the Court of First Instance of Cagayan. Ladaw, J.

The facts are stated in the opinion of the court.

Antonio Ma. Azurin for defendants and appellants.

First Assistant Solicitor General Ruperto Kapunan, Jr. and *Solicitor Antonio A. Torres* for plaintiff and appellee.

NATIVIDAD, *J.*:

This appeal has been brought to reverse a judgment of the Court of First Instance of Cagayan convicting the appellants of the violation of sections 101 and 103 of the Revised Election Code, Republic Act No. 180, and sentencing them to 1 year and 1 day of imprisonment, disqualification to hold a public office and deprivation of the right of suffrage for three years, and each to pay one-fifth of the costs.

It appears that by Resolution No. 57, dated August 30, 1949, of the Municipal Council of Gonzaga, Cagayan, two new election precincts, designated as Precincts Nos. 5 and 7, were created in that municipality to relieve other precincts thereof of excess voters, and it was further provided, among other things, that "those voters residing in the barrios of Topel, Marapang, Balat-balat, Ipil, Amonitan, Matuyan and their respective sitios" must register at the newly created precinct No. 7. For the elections of 1949 the accused Marcos Abuyuan, now deceased, Lorenza Sumagit, Arsenio C. Jacobo, Felipe Baclig and Arsenio Sunico were appointed, the first four as election inspectors, and the last, as poll clerk, of this precinct. As some of the electors residing in the above-named barrios of Gonzaga were registered in the elections of 1947 in Precincts Nos. 5 and 6, which under the resolution became Precincts Nos. 6 and 8, respectively, the Municipal Treasurer of Gonzaga instructed Marcos Abuyuan, as chairman of the Board of Inspectors, and Arsenio Sunico, as poll clerk, of Precinct No. 7, to copy from the registry of voters of precincts Nos. 6 and 8 the names of those voters whose residences are within the barrios assigned to Precinct No. 7 and include them in the registry of voters of said precinct. Accordingly, Arsenio Sunico and Marcos Abuyuan copied the names of such voters, the former from a copy of the registry list of voters of Precinct No. 6 which the municipal treasurer of Gonzaga had given to him, and the latter from the registry list of voters of Precinct No. 8 as said treasurer was not able to furnish him with a copy of the list of voters of this precinct. In the preparation, however, of these personal lists, both Sunico and Abuyuan omitted, the former six names, and the latter forty-two, of persons which, it is alleged should have been included in the registry list of voters of Precinct No. 7. And as the final list of voters of Precinct No. 7 were copied from said personal lists, the names of several alleged electors of the precinct did not appear recorded in its final registry list of voters. On the day of the election, November 8, 1949, several of those voters whose names had been omitted appeared at Precinct No. 7 to vote. Some of them were allowed to vote, notwithstanding that their names did not appear on the list; some were not.

The main question for determination in this appeal is whether or not the trial court erred in convicting the appellants of the violation of sections 101 and 103 of the Revised Election Code, Republic Act No. 180. Appellants contend that as there is no showing that in failing to include the names of several qualified electors in the registry list of voters of Precinct No. 7 of Gonzaga, Cagayan, they acted maliciously, they cannot be held criminally liable for the violation of said sections of the Revised Election Code.

We find appellant's contention well-founded. While it is not denied that the appellants failed to include in the final registry list of voters of Precinct No. 7 around 48 names which, it is claimed, should have been included therein, nevertheless it is clear from the evidence that such omission was due to lack of diligence rather than to a deliberate intent to violate the law and to disfranchise such voters. The failure of appellant Arsenio Sunico and the deceased Marcos Abuyuan to copy certain names appearing in the registry list of voters of Precincts Nos. 6 and 8 for transfer to the registry list of voters of Precinct No. 7 was clearly the result of honest error of judgment to which the failure of the proper municipal authorities and the electors affected to cooperate contributed. The then municipal treasurer of Gonzaga admitted that he was not able to furnish the board of inspectors of Precinct No. 7 with a copy of the list of voters of Precinct No. 8 in the elections of 1947. And none of the voters whose names, it is alleged, were omitted appeared before the board of election inspectors of Precinct No. 7 to ask that their names be included in the registry list of voters of said precinct. Moreover, the registry list of voters from which such names were to be taken seemed not to be in proper condition. Three of the many persons whose names it is claimed were omitted in said registry list, Alfonso Taguiam, Juan Domicil and Federico de la Cruz, testified that in the elections of 1947 they voted in the barrio of Bana, municipality of Gonzaga. This barrio was not among those whose electors were assigned to vote in Precinct No. 7 under Resolution No. 57, dated August 30, 1949, of the Municipal Council of Gonzaga. It was one of the barrios whose electors were assigned to cast their votes in Precinct No. 8. Taguiam, Domicil and De la Cruz having voted in Precinct No. 8 in the lections of 1947, their names ought to remain in the registry list of voters of that precinct until dropped therefrom in accordance with law, and there is no showing that they had applied for the cancellation of their names in that precinct and applied for registration in Precinct No. 7. In view of this circumstance, and the lack of proper cooperation on the part of the municipal treasurer and other officials upon whom the duty of coordinating the work of all the precincts affected by the changed devolved, it is not strange that mistakes had been committed by the

appellants. For these mistakes, clearly committed in good faith, they cannot be held guilty of the violation of the Revised Election Code.

The trial court, however, seemed to believe that notwithstanding the fact that the appellants "committed in good faith the serious offense charged", the latter are criminally reponsible therefor, because such offense is *malum prohibitum,* and, consequently, the act constituting the same need not be committed with malice or criminal intent to be punishable. We do not share this view.

"Malum prohibitum is defined to be an act made wrong by legislation—a forbidden evil". (26 Words and Phrases Judicially Defined, 259.) "A wrong prohibited; a thing which is wrong because prohibited; an act which is not inherently immoral but becomes so because its commission is expressly forbidden by positive law; an act involving an illegality resulting from positive law." (Black Law Dictionary.)

Tested by the above definition, the acts prescribed in sections 101 and 103 of the Revised Election Code and penalized by sections 183 and 185 of said code cannot be merely *mala prohibita*—they are *mala per se.* The omission or failure to include a voter's name in the registry list of voters is not only a wrong because it is prohibited; it is wrong *per se* because it disfranchises a voter and violates one of his fundamental rights. The acts are not rendered immoral merely because they are forbidden by positive law; they are inherently immoral by themselves. Hence, for such acts to be punishable, it must be shown that they have been committed with malice.

There is no clear showing in the instant case that the appellants intentionally, wilfully and maliciously omitted or failed to include in the registry list of voters of Precinct No. 7 of Gonzaga, Cagayan, the names of the voters alleged to have been excluded therefrom illegally. In fact, the trial court itself found that the appellants "committed in good faith the serious election offense charged." Their acts merely consisted of errors of judgment committed in the exercise of a judicial or quasi-judicial authority with which they are clothed by law. Upon the facts of record, therefore, they cannot be punished criminally (U. S. *vs.* Concepcion, 113 Phil., 21).

In view of the foregoing, we hold that the conviction of the appellants of the violation of sections 101 and 103 of the Revised Election Code, as penalized by sections 183 and 185 of said Code, is contrary to law and not supported by the evidence. The judgment appealed from is, therefore, reversed, and another is hereby entered acquitting the appellants of the charge at bar, with the costs *de oficio.*

It is so ordered.

Paredes and *De Leon, JJ.,* concur.

Judgment reversed.

[No. 8878–R. June 23, 1954]

PEDRO V. VILAR, petitioner and appellant, *vs.* GAUDENCIO V. PARAISO, respondent and appellant

APPEAL; TWO SEPARATE APPEALS IN ONE CASE; THOUGH ONLY ONE OF THE APPEALS IS EXCLUSIVELY COGNIZABLE BY THE SUPREME COURT, BOTH APPEALS MUST BE ELEVATED TO THE SUPREME COURT. —When a case involves two separate appeals, one by the petitioner and one by the respondent, and only one of these appeals is exclusively cognizable by the Supreme Court, the whole case must be elevated to the Supreme Court pursuant to the provisions of sections 17 and 31 of the Judiciary Act of 1948. The first section just mentioned provides that the Supreme Court shall have exclusive jurisdiction over all appeals in civil cases, even though the value in controversy exclusive of interest and costs is ₱50,000 or less, when the evidence submitted is the same as that involved in an appealed case within the exclusive jurisdiction of the same Court. The present case clearly falls within the meaning and spirit of said provision. Petitioner's appeal must, according to law, be elevated to the Supreme Court Respodnent's appeal must go with it although it involves questions of fact and law because it would be highly inexpedient and inadvisable for us to decide respondent's appeal and remand petitioner's to the Supreme Court.

APPEAL from a judgment of the Court of First Instance of Nueva Ecija. Nable, *J.*

The facts are stated in the opinion of the court.

Claro M. Recto and *Jose Nava* for petitioner and appellant.

Cirilo and *Santiago* for respondent and appellant.

DIZON, *J.*:

This is one of several cases allotted and referred to the undersigned, for decision, pursuant to a recent resolution approved by the Court of Appeals sitting *in banc* regarding the redistribution, among the present members thereof, of a number of cases left undecided by former members of the Court.

It appears that in the general elections held on November 13, 1951, petitioner and respondent were registered candidates for the office of Municipal Mayor of Rizal, Nueva Ecija. Petitioner received 1,467 votes while respondent received 1,509 votes. As a result the Municipal Board of Canvassers proclaimed the latter as the duly elected Municipal Mayor. On November 23 of the same year, petitioner commenced in the Court of First Instance of Nueva Ecija the present *quo warranto* proceedings to declare respondent ineligible and all together excluded from assuming office; to annul the proclamation made by the Municipal Board of Canvassers mentioned heretofore, and to have himself declared the duly elected Municipal Mayor of Rizal, Nueva Ecija.

The principal ground for the petition was the fact that respondent, at the time of the election, was a minister or

an ecclesiastic and was, therefore, ineligible to the office of Municipal Mayor in accordance with the provisions of section 2175 of the Revised Administrative Code. In his answer to the petition respondent denied his ineligibility and averred that he had resigned as minister of the United Church of Christ of the Philippines since August 1, 1951, said resignation having been duly accepted on the 27th of the same month and year.

Upon the evidence presented by both parties during the trial, the lower court found that respondent was an ecclesiastic, within the meaning of the law, and was therefore ineligible for the position of Municipal Mayor of Rizal, Nueva Ecija and, as a result, declared void the proclamation made in his favor by the Municipal Board of Canvassers, but refrained from declaring petitioner the duly elected Municipal Mayor, for lack of "sufficient legal grounds". Both parties appealed.

As far as petitioner's appeal is concerned, the issue is nothing more than this: Whether or not the trial court erred in refusing to proclaim him the duly elected Municipal Mayor of Rizal, Nueva Ecija, after declaring respondent ineligible for said office. As stated in his brief as appellant:

"The question involved in this appeal is whether petitioner having obtained the next highest number of votes can be declared the duly elected mayor of Rizal, Nueva Ecija, after the trial court found that respondent Reverend Gaudencio B. Paraiso was ineligible to said office for being an ecclesiastic, there being undisputed evidence to the effect that such ineligibility was publicly known." (p. 3).

The only question thus raised by petitioner being one of law, it follows that we have no jurisdiction to pass upon his appeal.

In the case of respondent's appeal, questions of law and fact are raised as evidenced by the following assignment of errors made in his brief:

I

"The learned trial court erred in its finding that the resignation was made "at a later date just to cure the ineligibility of respondent";

II

"The learned trial court further erred in not finding the resignation of the respondent and its acceptance as sufficient separation from his office as pastor or minister;

III

"The learned trial court erred finally in declaring the respondent ineligible to the office of municipal mayor to which the electorate of his municipality had exalted him."

However, there being only one case before us involving two separate appeals, and one of these appeals being exclusively cognizable by the Honorable Supreme Court, we are constrained to hold that, pursuant to the provisions of sections 17 and 31 of the Judiciary Act of 1948, the whole case must be elevated to the Supreme Court. The first sec-

tion just mentioned provides that the Supreme Court shall have exclusive jurisdiction over all appeals in civil cases, even though the value in controversy exclusive of interest and costs is ₱50,000 or less, when the evidence involved in said cases is the same as the evidence submitted in an appealed case within the exclusive jurisdiction of the same Court. The present clearly falls within the meaning and spirit of said provision. Petitioner's appeal must, according to law, be elevated to the Supreme Court. Respondent's appeal must go with it although it involves questions of fact and law because it would be highly inexpedient and inadvisable for us to decide respondent's appeal and remand petitioner's to the Supreme Court.

Wherefore, pursuant to the provisions of section 17, paragraph 6 and section 31 of Republic Act No. 296, otherwise known as the Judiciary Act of 1948, the present case is hereby certified and elevated to the Supreme Court for adjudication in accordance with law.

It is so ordered.

De Leon and *Peña, JJ.*, concur.

The present case is hereby certified and elevated to the Supreme Court for adjudication in accordance with law.

[No. 12199–R. June 28, 1954]

FRANCISCO MAGO and PRIMITIVO BALCE, petitioners, *vs.* Hon. MAXIMO ABAÑO, judge of the Court of First Instance of Camarines Norte, and MELITONA ASIS, respondents.

CERTIORARI; MOTION FOR RECONSIDERATION; DENIAL; COURT'S ERROR IN THE EXERCISE OF ITS JURISDICTION NOT CORRECTIBLE BY CERTIORARI.—If the findings of fact and legal conclusions of respondent Judge were erroneous the remedy must be sought elsewhere, and not by certiorari proceedings. If the respondent court had committed error in denying the motion for reconsideration, because it believed, contrary to the pretension of the movant, that its decision was supported by the evidence, that it was in conformity with law or that the damages awarded were not excessive, then *certiorari* does not lie. The writ of certiorari should not be used for correcting errors committed by the court in the exercise of its functions within its jurisdiction (Santos *vs.* Court of First Instance of Cavite, 49 Phil., 398). *"Certiorari is not a remedy for correcting error of fact or law,* but was created for the purpose of protecting interested parties from acts which judges or courts, without jurisdiction or acting in excess thereof as granted by the law, may commit. * * *. Errors may be corrected by appeal in cases where an appeal lies. * * *." (Ello *vs.* Judge of the Court of First Instance of Antique, 49 Phil., 152)

ORIGINAL ACTION in the Court of Appeals. Certiorari.

The facts are stated in the opinion of the court.

Manuel T. Ferrer for petitioners.
Melitona Asis for herself-respondent.
No appearance for other respondent.

PAREDES, *J.*:

The petition for certiorari alleges the following facts:

On July 13, 1953, Melitona Asis filed an action for foreclosure of mortgage against the spouses Francisco Mago and Primitiva Balce, Civil Case No. 507 of the Court of First Instance of Camarines Norte, based upon a deed of mortgage, Annex B. In their answer, the defendants admitted having borrowed from plaintiff Melitona Asis the total sum of ₱700 at a usurious interest, and alleged that the mortgage was void. (Annex E.) On July 27, 1953, Melitona Asis, answering the counterclaim, denied the allegations therein (Annex D). The case was set for hearing on September 21, 1953, at which hearing the defendants spouses did not appear, but filed a motion for postponement, which the court granted, re-setting the hearing for September 28, 1953. On this latter date, defendants spouses moved for the postponement of the hearing due to the absence of their counsel, against which an opposition was interposed by plaintiff Melitona Asis, through her counsel, Atty. Severino V. Balce, a public defender. The motion for postponement was denied, and plaintiff Melitona Asis presented her evidence and submitted the case for decision in the absence of defendants spouses. On September 30, 1953, defendants spouses filed a motion for judgment on the counter-claim, on the ground that the denial of Melitona Asis amounted to a general denial, and that same was equivalent to an admission of the allegations in the counter-claim (Annex E). The hearing of the motion for judgment on the counter-claim was set for October 12, 1953, but action thereon was deferred because on October 2, 1953, the defendants spouses received a copy of the decision in the said Civil Case No. 507, dated September 30, 1953. The said decision ordered defendants Francisco Mago and Primitiva Balce to pay the sum of ₱700 plus legal interest and damages, in the amount of ₱200 (Annex F). On October 5, 1953, defendants filed a motion for reconsideration of this judgment (Annex G), based on the grounds that the evidence was insufficient to sustain the decision; that the decision was contrary to law and jurisprudence; and that it awarded excessive damages (Annex H). On December 9, 1953, an order was issued, denying the defendants spouses' motion for reconsideration and the motion for judgment on the counter-claim (Annex I). It is now contended by the petitioners in this certiorari proceeding, who where the defendants spouses in the said Civil Case No. 507, that respondent Maximo Abaño had committed grave abuse of discretion in denying their motion for reconsideration; and that the said denial materially impaired and prejudiced their rights, and pray that the order dated December 3, 1953, be set aside and respondent Judge be ordered to give petitioners'

motion for reconsideration of the judgment due course, with costs against respondents.

In their answer, herein respondents alleged that the said Civil Case No. 507 had been set for hearing three (3) times, to wit: On September 14, 1953; September 21, 1953 and September 28, 1953; that on September 14, 1953, petitioner Primitiva Balce, without filing a motion for postponement, failed to appear, although petitioner Francisco Mago appeared and manifested that his lawyer was busy elsewhere and could not be present; and on respondent Melitona Asis' motion, the case was set a week later, i.e. September 21, 1953, in order to give the defendants' lawyer opportunity to be present. On the latter date, however, defendant-petitioner Francisco Mago appeared and manifested that his wife was fulfilling a religious vow in Naga City, without giving an explanation for the absence of his lawyer. Withal, Melitona Asis agreed to a last postponement of one week more (September 28, 1953), of which said Francisco Mago was duly advised; that on September 28, 1953, Francisco Mago appeared again without his lawyer, and asked for further continuance, because said lawyer could not be present; that the respondent court denied the last petition and permitted the plaintiff therein to produce her evidence and submit the case for decision; that on October 9, 1953, the motion for reconsideration (Annex G) was simply submitted by petitioners' counsel for resolution, without oral argument, but, upon respondent Melitona Asis' motion, respondent court granted her 5 days within which to file her opposition.

The herein respondents, in their answer, to the petition, likewise alleged that (1) the answer of defendants-spouses in said Civil Case No. 507, to the complaint, was not duly verified, because they failed to sign the verification; and that (2) the consideration of the mortgage was ₱700 and not ₱500, as per entry in the original thereof. Admittedly the trial court had jurisdiction to take cognizance of Civil Case No. 507. It seems that the only ground for the remedy sought in this certiorari proceeding, is the alleged grave abuse of discretion supposed to have been committed by the trial court, in denying the petitioner's motion for reconsideration of the judgment rendered by respondent Judge in said civil case. The motion for reconsideration (Annex G) is based upon the provisions of section 1 (*c*), Rule 37, and partakes of the nature of a motion for a new trial. The granting or not of a new trial rests upon the discretion of the court. The question, therefore, that is naturally posed in view of the facts before us, is whether or not *certiorari* is the proper remedy. It is a well accepted doctrine that *certiorari* will lie when the judge having jurisdiction over a case, has committed a grave abuse of discretion which amounts to an excess of jurisdiction. The decision of the

respondent judge (Annex F) clearly gives the reasons for the rendition of a judgment in favor of the plaintiff and against the defendants in said Case No. 507. If the findings of fact and legal conclusions of respondent judge were erroneous, the remedy must be sought elsewhere, and not in the present proceeding. If the respondent court had committed error in denying the motion for reconsideration, because it believed, contrary to the pretension of the movant, that its decision was supported by the evidence, that it was in conformity with law or that the damages awarded were not excessive, then *certiorari* does not lie. The writ of certiorari should not be used for correcting errors committed by the court in the exercise of its functions within its jurisdiction (Santos *vs.* Court of First Instance of Cavite, 49 Phil., 398). *"Certiorari is not a remedy for correcting error of fact or law,* but was created for the purpose of protecting interested parties from acts which judges or courts, without jurisdiction or acting in excess thereof as granted by the law, may commit. * * * Errors may be corrected by appeal in cases where an appeal lies. * * *." (Ello *vs.* Judge of First Instance of Antique, 49 Phil., 152; emphasis ours.)

The petition for a writ of certiorari is, therefore, denied; and the proceeding is dismissed, with costs against the petitioners. So ordered.

De Leon and *Natividad, JJ.,* concur.

Petition for certiorari denied and proceeding dismissed.

[No. 11122–R. June 29, 1954]

CHUA HUN, plaintiff and appellant, *vs.* MIGUEL VILLAREAL, ET AL., defendants and appellees

1. LAND REGISTRATION; UNREGISTERED CONTRACT AFFECTING REGISTERED LAND; REGISTRATION, THE OPERATIVE ACT THAT GIVES VALIDITY TO TRANSFER OF LAND.—An unregistered contract affecting registered land is valid between the parties; but it is valid between them only as a perfected contract which the parties may enforce against each other, and not as a transfer or conveyance of the land covered by the contract (Azores *vs.* Lazatin, CA–G. R. No. 1253–R, February 23, 1948, 45 Off. Gaz., No. 9, 3933). The question whether or not an unregistered sale of land covered with a Torrens title operates as a transfer of the land sold as between the parties, has been definitely resolved by the Supreme Court in Landig *vs.* U. S. Commercial Co., et al., L–3597, promulgated July 31, 1951, wherein it held: * * * that under the Torrens system, registration is the operative act that gives validity to the transfer or creates a lien upon the land." In a still later case, the Supreme Court even went further in holding that in voluntary registration, such as sale, mortgage, etc., even if the conveyance has already been entered in the day book by the Register of Deeds, "the deed of sale does not operate to convey and

affect the land sold" "if the owner's duplicate certificate be not surrendered and presented or if no payment of registration fees be made within 15 days" (Levin *vs.* Bass, et al., L-4340-46, 49 Off. Gaz., No. 4, 1444, promulgated May 23, 1953).

2. ID.; ID.; ID.; PURCHASER'S REMEDY.— Since an unregistered deed of sale does not operate to convey and transfer the lands sold but has the effect of a perfected executory contract between the parties, the purchaser's remedy is to demand from the seller the corresponding duplicate certificate of title so that he in turn could present the same to the Register of Deeds and have his sale registered.

3. ID.; CERTIFICATE OF TITLE AND DECREE OF REGISTRATION DISTINGUISHED.—The certificate of title should be distinguished from the decree of registration which forever binds the land and quiets title thereto. The decree of registration is the order of the court prepared and issued by the Chief of the Land Registration Office in pursuance of an order of the Court which is issued sometime after the judgment has become final (section 21, Act No. 2347) and has its inception in the decision of the court ordering its issuance entry (De los Reyes *vs.* De Villa, 58 Phil., 227; Gov't *vs.* abural, 39 Phil., 996). The certificate of title, on the other hand, is merely the entry made by the Register of Deeds in his "Registration Book" of the decree of the court, the exact duplicate of which marked "Owner's duplicate certificate", is delivered to the owner (Sec. 41, Act 496).

APPEAL from a judgment of the Court of First Instance of Laguna. Yatco, *J.*

The facts are stated in the opinion of the court.

Alberto O. Villaraza for plaintiff and appellant.
Generoso & Generoso for defendants and appellees.

REYES, J. B. L., *Pres. J.*

Appeal from a judgment of the Court of First Instance of Laguna (Civil Case No. 9426) ordering the plaintiff Chua Hun to execute the corresponding deed of sale of lots Nos. 1429 and 1474 of the Majayjay, Laguna Cadastre in favor of the defendants Miguel Villareal and Eugenia Lagdameo; the cancellation of the original certificate of title covering said lots and the issuance of a transfer certificate in the name of the defendants; and the payment of ₱1,000 moral damages and attorneys' fees to said defendants, plus costs.

This action arose from a complaint filed by plaintiff Chua Hun against defendant spouses Miguel Villareal and Eugenia Lagdameo for the recovery of the possession of the two parcels in question. The defendants answered with the defense of prescription, to which plaintiff, in reply, asserted ownership on the strength of Original Certificate of Title No. 4112 in the name of her late husband Ignacio Antonio Ongchoco. During the trial, however, defendants sought to present a deed of absolute sale signed by Ignacio Antonio Ongchoco in favor of defendant Miguel Villareal, and in order that such evi-

dence could be admitted, the defendants were allowed to amend their answer to include an express allegation of the existence of such sale, after which the deed of sale was admitted as Exhibit 1. In rebuttal, plaintiff in turn offered as Exhibit I a certain document purporting to be a sale *con pacto de retro* of the same parcels of land by Miguel Villareal to plaintiff's husband Ongchoco. The lower Court, however, denied admission of this exhibit, on the ground that it was improper rebuttal evidence.

There is no question that the two parcels in question formerly belonged to Ignacio Antonio Ongchoco, deceased husband of plaintiff Chua Hun. It also appears that said parcels were decreed registered in Ongchoco's name on October 18, 1926, by the Court of First Instance of Laguna; that the corresponding decree of registration was issued by the General Land Registration Office on January 12, 1927; and that said decree was duly transcribed in the "Registration Book" of the Register of Deeds for the Province of Laguna on February 15, 1927, as Original Certificate of Title No. 4112, in the name of Ignacio Antonio Ongchoco (Exhibit C). It is also conceded that on March 5, 1927, after the issuance of the decree of registration of the two parcels in Ongchoco's name, but before he received the owner's duplicate certificate of title, Ongchoco sold the same lands to appellee Miguel Villareal by virtue of the deed of absolute sale Exhibit 1.

The dispute revolves around the facts that took place after the sale of the two parcels by Ongchoco to appellee Villareal in 1927. According to the evidence for the plaintiff-appellant, Ongchoco had remained in the possession of the two parcels from 1927 to 1938, when the appellees wrested the possession thereof from Ongchoco; that it was only when Ongchoco died in 1945 and during the administration of his estate by his son, Dionisio Ong, that the latter learned for the first time that the lots in question ((which were adjudicated to plaintiff Chua Hun in the partition of Ongchoco's estate) were being claimed by appellee Miguel Villareal; that Dionisio Ong demanded from Villareal the delivery of the lands and the payment of their produce from the year 1938, but the latter instead offered to purchase the lands for ₱1,600; that the sale was not consummated because of the illness of Villareal, so that Dionisio Ong resold the same lands to Isaac Villareal under the deed Exhibit E; and that because Isaac was unable to obtain possession of the lands, he sought rescission of his contract with Dionisio Ong, and as a result thereof, he latter became liable to Isaac in damages in the sum of ₱500 for breach of contract.

Appellees claim, on the other hand, that when Ongchoco sold the parcels in question to Miguel Villareal in 1927, he delivered possession to the latter, who has enjoyed and possessed said lands uninterruptedly up to the present; that Villareal had been demanding the title of the lands from Ongchoco during the latter's lifetime, but Ongchoco had always put up the excuse that he did not have it yet; that after Ongchoco's death, Villareal went to see Dionisio Ong, Ongchoco's son, for the purpose of obtaining the title to the parcels, and that the latter promised to look for the same; and that although the parcels had never been declared by appellee Villareal in his name for taxation purposes, he at one time reimbursed Dionisio Ong the amount of ₱28 which the latter had paid as taxes on the lands.

After trial, the lower Court found that the appellees had been in the possession of the lots in question from March 5, 1927 up to the present; that Ignacio Antonio Ongchoco obtained registration of the lots in question in fraud of the rights of Villareal, to whom he had sold them by virtue of the deed Exhibit 1; that Ongchoco had become a trustee of Miguel Villareal with respect to the title of the said lands; and that the fact that Ongchoco had the title to the lots in his name did not deprive Villareal of his remedy of reconveyance. Wherefore, the trial Court rendered the decision mentioned at the beginning of this opinion.

Firstly, appellant Chua Hun argues that the trial Court erred in declaring the defendants the true owner and entitled to the possession of the parcels in question; and in our opinion, the resolution of this question alone is already decisive of this case.

The deed of absolute sale of the parcels in dispute made by appellant's husband Antonio Ongchoco in favor of appellee Miguel Villareal, and upon which the latter predicates his claim of ownership, is dated March 5, 1927, and acknowledged by a notary public on March 7, 1927 (Exhibit 1). These parcels were, however, decreed registered in Ongchoco's name by the decision of the Court of First Instance of Laguna of October 18, 1926, pursuant to which the General Land Registration Office issued the corresponding decree on January 12, 1927, and the Register of Deeds for Laguna transcribed the same in his "Registration Book" on February 15, 1927 Exhibit C). It thus results that when Ongchoco conveyed the lands in question to appellee Villareal on March 7, 1927, they had already been registered in the name of Ongchoco under the provisions of Act 496.

Section 50 of Act 496 provides that no voluntary instrument except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the

land unless such instrument is recorded in the register of deeds where the land lies, and until such instrument is recorded, it operates only as a contract between the parties and as evidence of authority to the register of deeds to make the registration, for the reason that the operative act to convey and affect the land is the act of registration. The deed of sale Exhibit 1 in favor of appellee Villareal has never been registered in accordance with the provisions of Act 496. Consequently, it did not bind and convey the ownership of the lands in question to the vendee Villareal, and ownership thereof remained in the vendor Ignacio Antonio Ongchoco.

The Court below, in holding that the contract of sale Exhibit 1 is valid and binding as between the parties even if not registered, relied for authority on the decision of this Court in Azores *vs.* Lazatin, C. A.–G. R. No. 1253–R, February 23, 1948, 45 Off. Gaz., No. 9, 3933. We did say in that case that an unregistered contract affecting registered land is valid between the parties; but we also stated that it was valid between them only as a *perfected* contract which the parties may enforce against each other, but not as a transfer or conveyance of the land covered by the contract. The question of whether or not an unregistered sale of land covered with a Torrens title operates as a transfer of the land sold as between the parties, has been definitely resolved by the Supreme Court in Landig *vs.* U. S. Commercial Co., et al., L–3597, promulgated July 31, 1951, wherein it held:

> "In matters affecting registered lands, we wish to hold on steadfastly to the ruling we have enunciated in the Anderson case (William H. Anderson & Co. *vs.* Garcia, 64 Phil., 506) that 'whatever might have been generally or unqualifiedly stated in the cases heretofore decided by this Court, we hold that under the Torrens Systems, registration is the operative act that gives validity to the transfer or creates a lien upon the land."

In fact, in a still later case, the Supreme Court even went farther in holding that in voluntary registration, such as sale, mortgage, etc., even if the conveyance has already been entered in the day book by the Register of Deeds, "the deed of sale does not operate to convey and affect the land sold" if the owner's duplicate certificate be not surrendered and presented or if no payment of registration fees be made within 15 days" (Levin *vs.* Bass, et al., L–4340–46, 49 Off. Gaz., No. 4, 1444, promulgated May 23, 1953).

It is thus seen that the deed of sale Exhibit 1 between Ongchoco and appellee Villareal, not being registered, did not operate to convey and transfer the parcels in dispute to the latter. Of course, it had the effect of a perfected executory contract between the parties; Villareal's remedy, therefore, should have been to demand from Ong-

choco the corresponding duplicate certificate of title so that he in turn could present the same to the Register of Deeds and have his sale registered. No action was brought by Villareal within ten years from the execution of the sale in question to compel delivery of Ongchoco's title; his right of action has, therefore, already long prescribed.

It may be true, as urged by the appellees, that at the time Ongchoco sold the parcels in question to appellee Villareal, he did not as yet have the corresponding certificate of title, because in the very deed of sale Exhibit 1, Ongchoco stated:

"Sinasaysay ko rin na sapagkat sa nakaraan paglilitis ng Catastro ay ako ang nagharap ng solicitud sa dalawang puestong sinasabi sa unahan, ay katunkulan ko na pagtangap ko ng naookol na titulo ay iliwat dito sa bumile and sinasabing TITULO gayon din sinasaysay na ako ang mananagot sa sinasabing Miguel Villareal tungkol sa katibayan ng dalawang puestong ito, kailan mang panahin at magkaroon ng kaligaligan."

The certificate of title should, however, be distinguished from the decree of registration which forever binds the land and quiets title thereto. The decree of registration is the order of the court prepared and issued by the Chief of the Land Registration Office in pursuance of an order of the court which is issued sometime after the judgment has become final (section 21, Act No. 2347) and has its inception in the decision of the court ordering its issuance and entry (De Los Reyes *vs.* De Villa, 58 Phil., 227; Govt. *vs.* Abural, 39 Phil., 996). The certificate of title, on the other hand, is merely the entry made by the Register of Deeds in his "Registration Book" of the decree of the court, the exact duplicate of which, marked "Owner's duplicate certificate", is delivered to the owner (section 41, Act 496). The parcels in question were considered registered in Ongchoco's name from the issuance of the court decree on October 18, 1926; and from that time on, any sale thereof, to be valid as a transfer of the land, must be made in accordance with the provisions of the Land Registration Act, it being immaterial to the validity of the sale that at the time it was executed, the registered owner had not yet received from the Register of Deeds his duplicate certificate of title.

It is well to point out here the misapprehension of fact into which the Court below had fallen when it found that Ongchoco obtaind the registration of the parcels in question "by reason of fraud" and "in open bridge (breach) of the fiduciarly (fiduciary) relationship" between him and appellee Villareal. As we have already stated, the parcels in question were already decreed registered in Ongchoco's name on October 18, 1926. The conveyance to Villareal was, on the other hand, made only on March 5, 1927. It is thus obvious that Ong-

choco could not have obtained his title in fraud of the rights of Villareal, for before Villareal even acquired any claim or interest over the parcels by virtue of the deed of sale Exhibit 1, said lands had already been registered in Ongchoco's name. Consequently, no trust relation could have existed between Ongchoco and appellee Villareal, to entitle the latter to the remedy of reconveyance.

For the above reasons, we hold that the ownership of the parcels in question was never transferred to appellee Miguel Villareal under the deed of sale Exhibit 1; that the right of Villareal to compel the delivery of the title to said parcels had already prescribed; and that therefore, Villareal should be ordered, as he is hereby ordered, to deliver the possession of these lands to the appellant Chua Hun.

We now come to the question of whether or not appellant is entitled to recover any damages from the appellees as a result of the latter's continued possession of the parcels in question. On this point, appellant claims that her husband Antonio Ongchoco had remained in the possession of these lands from 1927 up to 1938, when possession was unlawfully wrested by the appellees. We find this claim of appellant hard to believe. In the first place, if appellees' possession of these lands was unlawful, Ongchoco would have filed the corresponding action against them before his death in 1944. In the second place, appellant's evidence shows that Ongchoco himself administered his properties (which consisted of more than 100 parcels) during his lifetime; that when he died in 1944, his son Dionisio Ong, who was appointed administrator of his estate, had to ascertain and look for all the properties left by the deceased; that the title to the parcels in question, which also covers 14 other parcels (Exhibit C), was lost during the occupation and was recovered only after the war. It is therefore likely that Dionisio Ong found out for the first time the existence of the parcels in dispute in his father's estate only after liberation, when he recovered the title Exhibit C, and this must have also been the reason why he and his mother Chua Hun filed this action only in 1951.

We, therefore, conclude with the lower Court that appellees must have been in the continuous possession of the disputed lots from the year 1927, when Ongchoco sold them to Miguel Villareal, up to the present. And as they were placed in possession by the act of Ongchoco himself, and pursuant to a contract of sale which, although we have declared to be invalid as a transfer of the lands sought to be conveyed, was nevertheless an effective and binding executory contract between the parties, they must be deemed to be possessors in good

faith from 1927 up to 1951, when this action was filed. Appellant is, therefore, entitled to recover damages only from the year 1951.

The evidence discloses that the parcels in question contain approximately 200 fruit-bearing coconut trees, yielding about 1,800 to 1,900 nuts per harvest, and that the prevailing price of coconuts is ₱42 per thousand, ½ of which goes to the tenants or coconut pickers. It also appears that there are three harvests in a year. Assuming, therefore, that the lots in dispute give an average income of ₱20 per harvest or ₱60 a year for the owner, the appellant Chua Hun is entitled to recover from appellees damages in the approximate amount of ₱60 a year, from 1951 until the parcels in question are finally delivered to her.

Wherefore, the judgment appealed from is reversed, and appellant Chua Hun is hereby declared the lawful owner of the parcels in question. The appellees are ordered to surrender possession thereof to appellant, as well as to pay her damages in the amount ₱60 per annum from 1951 until the disputed parcels are finally delivered to her. Costs against appellees.

Ocampo and *Martinez, JJ.*, concur.

Judgment reversed; appellant Chua Hun declared lawful owner of the parcels in question.

[CA—G. R. No. 10582-R. July 15, 1954]

ALEJA BASIA and JUSTO BANDARA, plaintiffs and appellants, *vs.* CECILIO ESPADA and DOLORES ESPADA, defendants and appellants.

FORCIBLE ENTRY; DAMAGES; MEASURE OF RECOVERABLE DAMAGES.—The question of good or bad faith does not have a bearing on the assessment of damages, when the case between the parties is one of forcible entry. Otherwise a defendant who is turned out of possession would have to answer not only for the fruits received but also for those which the plaintiff might have received (art. 549, Civil Code). This, however, is not true in forcible entry cases, in which the measure of recoverable damages is the reasonable compensation for the use and occupation of the premises (sec. 6, Rule 72; Moran, Comments on the Rules of Court (1952 ed.), Vol. 2, p. 308). This has been construed to mean the fair rental value of the property, taking into account all the surrounding circumstances. (See Sparrevohn *vs.* Fisher, 2 Phil., 676; Torres *vs.* Ocampo, 45 Off. Gaz. [No. 7] 2876).

Appeal from judgement of the Court of First Instance of Iloilo. Imperial Reyes, *J.*

The facts are stated in the opinion of the court.

Simeon A. Barranco for plaintiffs and appellants.

Manuel A. Akoal and *Benjamin A. Defensor* for defendants and appellants.

MAKALINTAL, *J.*

In the original action between the same parties (CA–G. R. No. 5411–R) this Court rendered judgment on June 23, 1951, ordering defendants to restore possession of lot No. 2787 of the Janiuay Cadastre to plaintiffs and remanding the case to the lower court "for the production of evidence of the products unlawfully gathered by appellees (defendants) during the time of the unlawful occupation of the land by them and the condition of the corresponding decision." After due hearing the court below issued the following order:

"Las pruebas practicadas por los demandantes, en complimiento del último párrafo de la decisión de la Corte de Apelaciones, promulgada en 23 de Junio de 1951, demuestran que el terreno cuestionado, en 1945, produjo 88 bultos de palay a razón de ₱50 el bulto; que en 1946 el mismo terreno produjo igual numero de bultos de palay con la diferencia de que el precio de este cereal era de ₱40 el bulto; que en los años 1947, 1948, 1949, 1950 y 1951 también produjo igual numero de bultos de palay a razón de ₱25 el bulto; y que en estos últimos años—1947 a 1951—el precio del bulto de palay se cotizaba de ₱15 a ₱20.

"Por medio del testimonio de Rosario Abordo y Rafael Lutero, los demandados trataron de probar que el terreno questionado solo producia de 10 a 20 bultos de palay al año.

"El testimonio de la demandante Aleja Basia no tiene ninguna corroboración. El Juzgado se inclina a creer que lo declarado por esta testigo sobre el número de bultos de palay que se produjo en el terreno cuestionado es algo exegerado. Hay, sin embargo, el hecho indiscutible que, durante la vista de este asunto, la demandada Dolores Espada admitió que el terreno cuestionado, que tiene una extensión de 16 hectares, producia 80 bultos de palay al año (Vease página 9 de la decisión de la Corte de Apelaciones).

"Ademas, el testimonio de Rosario Abordo, madre de la demandada Dolores Espada, es absolutamente indigna de credito. Tal testimonio va en contra de la declarado por su hija, la demandada Dolores Espada, y aquella (Rosario Abordo) no se molesto en declarar durante la vista de este asunto no obstante su pretensión de que ella, juntamente con su esposo, han estado cultivado el terreno cuestionado.

"Con vista de la referida admisión de la demandada Dolores Espada, el Juzgado declara probado que el terreno cuestionado producia 80 bultos de palay al año, la mitad de los cuales debe pertenecer a los demandantes, que, según decisión de la Corte de Apelaciones, tienen derecho a la posesión del mismo, y la otra mitad a los que lo han cultivado.

"El Juzgado acepta como razonable el precio de 50 el bultos de palay durante el año 1945, ₱40 durante al año 1946 y ₱25 durante los años 1947 a 1951.

"En su decisión, la Corte de Apelaciones no han hecho ningún pronunciamiento de que los demandados entraron de mala fe en el terreno cuestionado y la unica instrucción, contenida en dicha decisión, es que se determine al valor de los productos, recogidos de dicho terreno.

"Por tanto, el Juzgado condena a los demandados que paguen a los demandantes 280 bultos de palay en total a su precio que asciende a la suma de ₱8,600."

The order above-quoted is now before this court for review on appeal by both parties. We believe that the

evidence sustains the finding of the court below that the land in question produced 80 *bultos* of palay every year or a total of 360 *bultos* from 1945 to 1951, inclusive, during which defendants were in unlawful occupation thereof. This yearly production figure was admited by defendant Dolores Espada herself at the trial of the original case, as stated by this Court in its decision of June 23, 1951.

Plaintiffs contend, however, that the lower court erred in limiting defendants' liability to one-half of the total production of the land, alleging that defendants were possessors in bad faith and therefore should reimburse the fruits received and those which the legitimate possessor could have received, deducting therefrom only the necessary expenses in accordance with articles 443 and 546 of the Civil Code. On the other hand, defendants maintain that since they received, in the concept of landlords, only one-third of the yearly crop, the other two-thirds being the share of the persons who cultivated the property and who furnished the seeds and work animals for that purpose, defendant's liability should not exceed what they actually received.

The question of good or bad faith does not have bearing on the assessment of damages, the case between the parties being one of forcible entry. Otherwise a defendant who is turned out of possession would have to answer not only for the fruits received but also for those which the plaintiff might have received (Art. 549, Civil Code). This, however, is not true in forcible entry cases, in which the measure of recoverable damages is the reasonable compensation for the use and occupation of the premises (sec. 6, Rules 72, Moran, Comments on the Rules of Court (1952 ed.), Vol. 2, p. 308). This has been construed to mean the fair rental value of the property, taking into account all the surrounding circumstances. See Spanevohn *vs.*. Fisher, Phil., 676; Torres *vs.* Ocampo, 45 Off. Gaz. (No. 7, 2876).

Applying the criterion just stated, we believe that one-third of the yearly production, which plaintiffs would have received as landlords if they had been in possession of the land, constitutes reasonable compensation in this case. The total production from 1945 to 1951 was 560 *bultos,* valued at ₱17,200, as found by the lower court, which finding we have no reason to disturb.

Wherefore, the decision apepaled from is hereby modified in the sense that defendants should pay, as they are hereby ordered to pay, plaintiffs one hundred eighty-six and two-thirds *bultos* of palay or their value of ₱5,733.33, without pronouncement as to costs.

Felix and *Peña, JJ.*, concur.

Judgement modified.

[CA–G. R. No. 11224–R. July 17, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* RODRIGO CANTONG, defendant and appellant

1. CRIMINAL LAW; LIGHT COERCION.—One who embraced and kissed his former fiancee against her will and consent, under an impulse of anger rather than from a desire to satisfy his lust, cannot be held guilty of the crime of acts of lasciviousness, but of light coercion under paragraph 2, article 287 of the Revised Penal Code. (People *vs.* Periano Masikat, CA–G. R. No. 8444–R, promulgated August 30, 1952; People *vs.* Pablo Ignacio, CA–G. R. No. 5119–R, promulgated September 30, 1950).
2. ID.; ID.; AGGRAVATING CIRCUMSTANCES; ACTS COMMITTED WITH IGNOMINY AND DISCHARGED OF RESPECT DUE THE OFFENDED PARTY ON ACCOUNT OF HER SEX.—Considering the fact that the accused embraced and kissed his former fiancee against her will and consent, under an impulse of anger rather than from a desire to satisfy his lust, in the presence of many persons, and considering further the fact that the offended party is a young woman, it is clear, that the said acts were committed by the accused with ignominy and in disregard of the respect due the complainant on account of her sex. These circumstances which surround the execution of the act committed by the accused tended to make the effects of the crime more humiliating.

APPEAL from a judgment of the Court of First Instance of Rizal. Tan, *J.*

The facts are stated in the opinion of the court.

Nestorio R. De Leon for defendant and appellant.

Assistant Solicitor General Francisco Carreon and *Solicitor Juan T. Alano* for plaintiff and appellee.

HERNANDEZ, *J.:*

This is an appeal from a judgment of the Court of First Instance of Rizal convicting the defendant-appellant Rodrigo Cantong of the crime of acts of lasciviousness as defined and penalized by Article 336 of the Revised Penal Code, and sentencing him to an indeterminate imprisonment of not less than 2 years, 4 months and 1 day to 4 years and 2 months, to the accessory penalties provided by law and to the payment of the costs.

The information under which the defendant-appellant Rodrigo Cantong was tried, convicted, and sentenced, is as follows:

"That on or about the 1st day of June, 1952, in the municipality of Pateros, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously by means of force, commit acts of lasciviousness on the person of Elisa Villegas, by then and there embracing and kissing her, all against her will and consent.

"Contrary to Law."

It appears from the evidence of record that on or before the month of December, 1951, the complainant Elisa Villegas and the defendant-appellant Rodrigo Cantong were principals in a love affair. Subsequently, both of them decided to get married and as a result, the defendant-appellant sent his mother, an aunt, and uncle to see the parents of the complainant Elisa Villegas with the sole purpose of asking for the latter's hand in marriage. To such a request, the girl's parents did not have any formal objection, however, they suggested that the celebration of the marriage be held in the following year, inasmuch as one of their daughters had just married on that same year when the defendant-appellant Rodrigo Cantong made the proposal of marriage. Such an arrangement disappointed both the complainant Elisa Villegas and the defendant-appellant Rodrigo Cantong, but apparently no untoward incident happened and the friendly relations between the two, continued.

Sometime thereafter, the complainant Elisa Villegas, learned from certain sources that her fiancee, defendant-appellant Rodrigo Cantong, frequented night clubs and even had affairs with some women working in one of said establishments. Such conduct of the defendant-appellant irked the complainant who refused, from then on, to see the defendant-appellant whenever he wanted to visit her.

The defendant-appellant Rodrigo Cantong noticed this marked change in attitude on part of the complainant Elisa Villegas and tried to restore the friendly relations that previously existed between them. As a matter of fact, the defendant-appellant sent several notes to the complainant. (See Exhibits A and B). All of his efforts were in vain. In the month of March, 1952, the relationship between the complainant and the defendant-appellant was so estranged, that the defendant-appellant had to return to the complainant Elisa Villegas, a picture which the latter had given him as a token of their friendship. Exhibit 6.)

On June 1, 1952, at about 7 o'clock p. m., the defendant-appellant went to the house of the complainant and intimated to the mother of his former fiancee his desire to talk to the latter. The mother told the defendant-appellant that her daughter, Elisa Villegas, could not see him because she was going to attend the May Flower Festival and that she was dressing up for the affair.

At around 9 o'clock of the same evening, while the complainant Elisa Villegas and her niece were standing near the Municipal Building waiting for the procession which was about to start, the defendant-appellant Rodrigo Cantong, all of a sudden came from behind, and without uttering any word, embraced and kissed his former fiancee. Complainant Elisa Villegas struggled against the advances

made by the appellant Rodrigo Cantong and shouted for help. Fortunately, a policeman who was nearby, heard the voice of the complainant Elisa Villegas and upon reaching the scene of the crime, immediately stopped the defendant-appellant from continuing his attacks. As a consequence of the assaults committed against the person of the complainant Elisa Villegas, she suffered several contusions in the face.

On that very same evening, the complainant Elisa Villegas went to the Municipal Building to lodge a complaint against her former friend, the herein defendant-appellant. These are the facts that do appear to have been clearly established by the parties during the trial. We shall now proceed to make an inquiry into the criminal liability of the defendant-appellant Rodrigo Cantong.

The defendant-appellant Rodrigo Cantong admitted that he embrased and kissed the complainant Elisa Villegas against the will and consent of the latter. Relying on the precedent laid down in the early case of U. S. *vs.* Gomez, 30 Phil., 23, the defendant-appellant claims exculpation of the crime for which he was convicted, by alleging that he committed the aforementioned acts in a moment of "ardent longing." As previously stated, the lower court convicted the accused of the crime of acts of lasciviousness, as defined and penalized by Article 336 of the Revised Penal Code.

The Solicitor-General, citing the controlling rationale of this Court's decisions in the cases of People *vs.* Periano Masikat, CA–G. R. No. 8444–B, promulgated on August 30, 1952 and People *vs.* Pablo Ignacio, CA–G. R. No. 5119–R, promulgated on September 30, 1950, contends that while the aforementioned acts of the defendant-appellant Rodrigo Cantong does not constitute the crime of acts of lasciviousness as defined by Article 336 of the Revised Penal Code, they fall squarely within the scope of Article 287, paragraph 2, of the same Code which defines the crime of light coercion.

Thus, in the case of People *vs.* Periano Masikat, *supra*, this Court developed the foregoing principle of law in the following manner:

"Although what was actually proven during the trial was that Periano tried but failed to fondle Maxima's breast and kissed her, and her testimony in court rings true such acts are in the purview of Article 287, paragraph 2, of the Revised Penal Code * * *"

In the same vein is the decision of this Court in the case of People *vs.* Pablo Ignacio, *supra*. Thus:

"* * * While proceeding homeward from the river at Peñaranda, Nueva Ecija, bearing on her head a wash basin filled with clothes, Gloria Serrano was accosted from behind, by appellant Pablo Ignacio who embrassed her, held her close and kissed her on the cheek."

In the above-entitled case, the trial court convicted the accused of acts of lasciviousness, but on appeal this Court found the defendant guilty only of light coercion under Article 287, paragraph 2 of the Revised Penal Code.

A careful examination of the record has not convinced us that all the essential elements of the crime of acts of lasciviousness are present. We believe that the defendant-appellant acted under an impulse of anger rather than a desire to satisfy his lust. However, we highly disapprove the ungentlemanly and despicable conduct of the appellant when he embraced and kissed his former fiancee against her will and consent. While the defendant-appellant may have committed the offense in a fit of anger, his acts, however, cannot be tolerated in a decent society.

It is our considered opinion that the contention of the Solicitor General is correct. While the acts of the defendant-appellant do not constitute the crime of acts of lasciviousness, such acts falls squarely within the scope and purview of Article 287, paragraph 2, of the Revised Penal Code which defines and penalizes the crime of light coercion.

Considering the fact that the defendant-appellant Rodrigo Cantong, committed the aforementioned acts in a public place and in the presence of many persons, and considering further the fact that the offended party is a young woman, it is clear, that the said acts were committed by the defendant-appellant with ignominy and in disregard of the respect due the complainant on account of her sex. These circumstances which surround the execution of the act committed by the defendant-appellant tended to make the effects of the crime more humiliating.

Wherefore, we hereby modify the findings of the lower court by declaring the defendant-appellant Rodrigo Cantong guilty of the crime of light coercion as defined and penalized by article 287, paragraph 2, of the Revised Penal Code and by sentencing him to an imprisonment of 21 days and to the payment of the costs of the proceedings.

It is so ordered.

Gutierrez David and *Martinez, JJ.*, concur.

Judgment modified.

[No. 11604–R. July 26, 1954]

CESAREO B. NAVARRO, plaintiff and appellant, *vs.* JOSE N. BARREDO, doing business under the name and style of "J. N. BARREDO CONSTRUCTION ENTERPRISES", defendant and appellee.

1. WORKSMEN'S COMPENSATION ACT; EMPLOYER AND EMPLOYEE; PHRASES "ARISING OUT OF" AND "IN THE COURSE OF" EMPLOYMENT, CONSTRUED; CASE AT BAR.—Plaintiff, a laborer of de-

fendant, having been recruited by a labor foreman of the latter, was instructed to get refuse nails from the roof gutter of the building under construction and, after picking up some nails and was about to go back to his work contacted a live wire resulting to his injury. *Held:* Plaintiff suffered an injury from a accident arising out of and in the course of his employment, within the meaning and contemplation of section 2 of the Workmen's Compensation Act. "The words 'arising out of' refer to the origin or cause of the accident, and are descriptive of its character, while the words 'in the course of' refer to the time, place and circumstances under which the accident takes place." (Afable *vs.* Singer Sewing Machine Co., 58 Phil., 39.)

2. ID.; ID.; ABSENCE OF PROOF THAT EMPLOYEE WAS NOTORIOUSLY NEGLIGENT; CASE AT BAR.—Where it is shown that the employee's injury was directly caused while he was in the performance of his work; that he was at the time and place where he had the right to be and in the premises controlled by and under the direct supervision of the employer; and that the accident was caused by a risk to which all persons similarly situated are equally exposed; he may recover compensation for said injury in the absence of proof that he was "notoriously" negligent (Sec. 4, par. 3, Act No. 3428).
3. EVIDENCE; PUBLIC DOCUMENT; ADMISSION CARD IN A GOVERNMENT HOSPITAL, ITS PROBATIVE VALUE.—The admission card of the patient at the Philippine General Hospital, which is a public document, should be taken on its face value, in the absence of proof that there was irregularity in its preperation.
4. WORKMEN'S COMPENSATION ACT; EMPLOYER AND EMPLOYEE; CONTRACTOR; INDEPENDENT CONTRACTOR, DEFINED.—An independent contractor is "one who exercises independent employment and contracts to do a piece of work according to his own methods, and without being subject to the control of his employee except as to the result of the work" (Andaya et al., *vs.* M. R. R. Co., G. R. No. 34772, March 28, 1932).
5. ID.; ID.; PAKIAO SYSTEM; EXISTENCE OF RELATION OF EMPLOYER AND EMPLOYEE; LABOR CONTRACTS, HOW CONSTRUED.—The relation of employer and workmen exists between the contractor and one who undertakes to furnish laborers to the contractor on the "pakiao system". The Supreme Court held that it is the custom in the Philippines to hire labor, especially in building construction, either by the day or by piece work, the latter being locally known as *pakiao;* but in either case, the relation of employer and workmen exists. (Montalban et al., *vs.* Tan Soon, G. R. No. 48804, July 24, 1942). It might be well to remember that "in case of doubt, all labor legislations and all labor contracts shall be construed in favor of the safety and decent living for the laborer." (Art. 1702, new Civil Code.)

APPEAL from a judgment of the Court of First Instance of Manila. Amparo, J.

The facts are stated in the opinion of the court.

Cesareo Perez & Antonio S. Atienza for plaintiff and appellant.

Diaz & Baizas for defendant and appellee.

PAREDES, *L.:*

This is a claim for compensation originally filed by plaintiff Cesareo B. Navarro, from defendant Jose M. Barredo, doing business under the name and style of "J. M. Barredo Construction Enterprises", under the Workmen's Compensation Act (Act No. 3428, as amended), in the Municipal Court of Manila, which ordered the defendant to pay the plaintiff the sum of ₱906.17. On appeal, defendant obtained a reversal in the Court of First Instance of Manila, by the dismissal of the complaint, with costs against the plaintiff who interposed the present appeal.

By a preponderant weight of evidence, the plaintiff has proven the following facts:

The defendant was engaged in the business of construction of houses and had in his employ an engineer who supervised his construction works and other workers, one of whom was Francisco Cunanan, a labor foreman, who was the one who recruited the plaintiff, the witness Calixtro Caballero and other laborers. The defendant undertook the construction of a house, chalet, located at No. 957 Padre Faura Street, Manila, belonging to Jose Zamora. The plaintiff was employed by the defendant as a *latero* or tinsmith in said construction, a task he had been doing since the date of his employment on December 17 or 18, 1947 until December 27, 1947, at a daily wage of ₱5.00. At about 9:00 o'clock in the morning of the latter date, while the plaintiff was on top of the house of Mr. Zamora, which was being constructed, plaintiff's head accidentally came in contact with a live wire over the roof thereof; he was shocked and fell to the ground, several meters down, as a consequence of which, he suffered injuries. The plaintiff was rushed to the Philippine General Hospital and subjected to a physical examination by a doctor of said Hospital at about 10:25 o'clock in the same morning. The plaintiff since his fall (December 27, 1947) until May 15, 1948, was incapacitated for work. Upon final physical examination of plaintiff's injuries conducted by Dr. Benigno C. Parayno, a resident physician of the Pangasinan Provincial Hospital, it was found out that plaintiff's left hand permanently lost 18 per cent of its utility (Exhibits B and B–1). The plaintiff, through the Bureau of Labor, gave notice to the defendant of the accident and injuries; and in spite of repeated demands, the said defendant also repeatedly refused to pay his compensation.

The defendant-appellee did not deny the accident. Through the testimony of the lone witness of the defendant, Modesto Abriam, an engineer who was employed by the said appellee to supervise his construction works, it was alleged that the plaintiff had not been employed by the appellee,

as its laborer on said construction project; that the plaintiff was seen in the premises on that day (December 27, 1947) only; that the work was already terminated, and said plaintiff had no reason being on the roof; that Francisco Cunanan recruited laborers; having been the subcontractor to furnish labor only; that plaintiff was on the roof of the chalet under construction at about noon of December 27, 1947, in an effort to peep at a woman "in dishabille" in a room of an adjoining house.

The trial court, sustaining the defense interposed by the defendant-appellee, declared that: (1) the plaintiff-appellant was not a laborer of the said defendant-appellee; (2) the accident did not arise out of and in the course of appellant's employment with the appellee; and (3) the case was unmeritorious. Appellant assigned these findings and conclusions as errors, allegedly committed by the trial court. We have examined the record and the law on the case, and We find the present appeal to be well-taken.

Plaintiff Cesareo Navarro and Calixtro Caballero testified that they were both working as laborers of the defendant on the date of accident, having been recruited by one Francisco Cunanan, a labor foreman of defendant; and that when plaintiff contacted a live wire at the roof of the building, he had just picked up refuse nails in order to use them in connection with the work on the roofs. Plaintiff, therefore, suffered an injury from an accident arising out of and in the course of his employment, within the meaning and contemplation of section 2 of the Workmen's Compensation Act. "The words 'arising out of' refer to the origin or cause of the accident, and are descriptive of its character, while the words 'in the course of' refer to the time, place and circumstances under which the accident takes place." (Afable *vs.* Singer Sewing Machine Co., 58 Phil., 39.) Nails were needed in the work; there was non-available at the time; Caballero instructed the plaintiff to get the remnants from the gutter, and, after picking up some nails and was about to go back to his work, he met with the accident. The injury was directly caused while in the performance of the plaintiff's work; he was at the time and place where he had the right to be and in the permises controlled by and under the direct supervision of the defendant; and what befell upon him was caused by a risk to which all persons similarly situated are equally exposed; he was doing a thing which a man while working may reasonably do. In the absence, therefore, of proof that the said plaintiff was "notoriously" negligent (section 4, par. 3, Act No. 3428), there is no justification for upholding the defense of the defendant-appellee. Counsel for defendant however, al-

leged that the accident occurred at past 12:00 noon on said date, December 7, 1947, and at a moment when laborers were supposed to be resting or having lunch, and said plaintiff was engaged in peeping at a naked lady in a neighboring house. Oral and documentary proofs of plaintiff, however, reveal that the accident must have taken place at about 9:00 o'clock in the morning. Plaintiff and his witness Calixtro Caballero declared that it was around 9:00 o'clock when the former fell from the roof. The admission card of the patient at the Philippine General Hospital (Exhibit C), which is a public document, states that plaintiff-appellant was treated in said Hospital at 10:25 in the morning of December 27, 1947. This document should be taken on its face value, in the absence of proof that there was irregularity in its preparation. While Engineer Abriam declared that the accident took place at 12:00. We cannot, in the face of the facts on hand, give him full credence, because he was the supervising engineer of the defendant-appellee, whose interests he was bound to protect. Emphasis is laid on the alleged behaviour of plaintiff in peeping at a naked lady on the other side of the fence, which was, of course, not within the scope of his work, if true. We have also our doubts regarding this imputation of Engineer Abriam, uncorroborated as it was. He said that before the time the accident in question happened, two laborers were taken to the police station, for peeping over the neighboring house upon the complaint of the supposedly naked woman. If this is true, it was not likely that the same woman would have continued exposing herself in the same condition to the view of the laborers working nearby, in the absence of proof that she was one of easy virtue. After the first incident with the two laborers, the woman would have closed the window or ceased to become dressless. If the two laborers were brought to the police station, for peeping into the affiairs of others, it was not likely that the plaintiff, a family man, would endanger his health by committing the same mischief which the two other laborers allegedly previously did.

Vain efforts were made by the appellee to show that he had nothing to do with Francisco Cunanan who, according to him, was a sub-contractor or an independent labor contractor. It was not satisfactorily explained why said Cunanan was not presented to testify in court, and that meager efforts were exerted by appellee to produce him as his witness. This on one hand; on the other, Cunanan was merely a labor foreman, a recruiter of laborers who were to work in the construction projects of the appellee, under the supervision of Engineer Abriam, a supervisor of appellee in his construction works. There was no showing that Cunanan had a capital of his own to pay his laborers,

or had filed a bond, and was not subject to appellee's control. On the contrary, Engineer Abriam testified that the alleged sub-contractor Cunanan had no capital of his own; he was not bonded, and he was under the control and supervision of the appellee, through the said Engineer Abriam (Montalban, et al. *vs.* Tan Soon, G. R. No. 48804, July 24, 1942). Considering that an independent contractor is "one who exercises independent employment and contracts to do a piece of work according to his own methods, and without being subject to control of his employee except as to the result of the work" (Andoyo, et al. *vs.* M. R. R. Co., G. R. No. 34772, March 28, 1932); and it appearing that the appellee failed to show satisfactorily, as it was his duty so to do, by competent evidence that Cunanan comes within the purview of this principle, this Court must give credence to the testimony of the plaintiff and his witness Caballero that Cunanan was merely the labor recruiter of the appellee, and that these two laborers were employed by the appellee in the construction of Mr. Zamora's chalet. Conceding, for the purposes of argument, that Cunanan undertook to furnish the laborers to the appellee on the *pakiao* system, still the relation of employer and workmen exists between the parties. The Supreme Court held: "* * * It is the custom in the Philippines to hire labor, especially in building construction, either by the day or by piece work, the latter being locally known as *pakiao*; but in either case, the relation of employer and workmen exists." (Montalban case, *supra*.) Although We do not doubt at all the right of the appellant to recover his compensation under the facts and circumstances attending this case, it might be well to remember the Civil Code provision, that "In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer." (Art. 1702, Civil Code.) A decent living for a laborer, like the appellant, may be attained, by giving him the compensation which the law provides in the premises.

In view hereof, we reverse the judgment appealed from; and enter another one, ordering the appellee to pay the appellant the sum of ₱906.17, with legal interest thereon, from September 27, 1950, taxing the costs on the appellant.

So ordered.

Natividad and *Saguin, JJ.*, concur.

PAREDES, *J.*:

It appearing that in the dispositive portion of the decision rendered in the above-entitled case, which was promulgated on July 26, 1954, a mere clerical error has been

committed, the same is hereby amended so as to read as follows:

"In view hereof, we reverse the judgment appealed from; and enter another one, ordering the appellee to pay the appellant the sum of ₱906.17, with legal interest thereon, from September 27, 1950, taxing the costs against the appellee."

So ordered.

Judgment reversed; another one entered, ordering appellee to pay the appellant the sum of ₱906.71, with legal interest thereon, from September 27, 1950, taxing the costs against the appellee.

[No. 4848-R. July 31, 1954]

FELIX BAÑAGA, ET AL., peticionarios y apelantes, *contra* RUFINA B. PASCACIO, ET AL., opositores y apelados

1. HIJOS NATURALES; RECONOCIMIENTO; RECONOCIMIENTO EN EL ACTA DE NACIMIENTO; ARTÍCULOS 325 y 326, CÓDIGO CIVIL DE 1889, JAMAS PUESTOS EN VIGOR.—El acta de nacimiento que se menciona en el articulo 131 de Código Civil de 1889 es el registro a que se refieren los artículos 325 y 326 del repetido código civil. La aplicación de estos artículos, sin embargo, fué suspendida por el decreto del Gobernador General de fecha 29 de diciembre de 1889, y jamás fueron puestos en vigor en las islas Filipinas (Corrales Tan Mariano *contra* Koşter y otros, 48 Jur. Fil., 427). Por tanto se declara: Que no existia en nuestro pais la forma de reconocimiento en el acta de nacimiento desde el año 1889 hasta 1931, en que entró en vigor la ley 3753 estableciendo el Registro Civil.
2. ID; ID; UNA SOLICITUD PARA DECLARACIÓN DE HEREDERO EQUIVALE (UNA PARA RECONOCIMIENTO DE HIJO NATURAL; MENORES, PERÍODO PARA INCOAR LA ACCIÓN DE RECONOCIMIENTO.—UNA solicitud en que el solicitante pide se le declare heredero puede considerarse como una petición para ser reconocida como hijo natural (Lopez *vs.* Lopez, 68 Phil., 227). Y de acuerdo con el artículo 137 del viejo Código Civil, tal como fue reformado por los artículos 44 y 45 del Código de Procidimiento Civil, los hijos naturales podrián incoar acción para su reconocimiento forzoso como tal á los dos años de su mayaría de edad.

2. ID.; ID.; SOLICITUD DE CARTA DE ADMINISTRACION; ACCIÓN COMPLEJA DE RECONOCIMIENTO FORZOSO Y PARTICIÓN DE BIENES; CASO DE AUTOS.—La solicitud de carta de administración de parte de uno de los peticionarios en el intestado de su difunta madre, en que luego dicho peticionario y su hermana reclamaron ser herederos de su difunta madre en calidad de hijos naturales, dentro del plazo de dos años desde que uno de ellos llegó á su mayoria de edad, podria ser tenida como el equivalente de la acción compleja de reconocimiento forzoso y partición de bienes (Briz *vs.* Briz, 43 Jur. Fil., 805).
4. ID.; ID.; MUERTE DE LA MADRE, ACCIÓN CONTRA LOS HEREDEROS DE LA MADRE.—Una acción para el reconocimiento de un hijo natural puede ejercitarse contra los herederos de la madre si esta falleció durante la menor edad del hijo (Conde *vs.* Abaya, 13 Jur. Fil., 254).
5. ID.; ID.; FALLECIMIENTO DEL QUE PIDE SU RECONOCIMIENTO; TRANSMISIÓN DE SUS DERECHOS A FAVOR DE SUS HEREDEROS.—Una vez ejercitada una acción por uno que pide su reconocimiento como hijo natural, y este falleciere antes de resol-

verse difinitivamente la causa, dicha acción, en intéres de la justiciá y equidad, debe transmitirse a los herederos del mismo, puesto que no seria justo privar a dichos herederos de continuar con la acción debidamente ejercitada por su difunto padre que no tenia poder para obligar al juzgado que resolviese pronto su causa.

APPEAL from a judgment of the Court of First Instance of Zambales. Martinez, *J.*

The facts are stated in the opinion of the court.

Nemesio Balonso for petitioners and appellants.
Juan R. Arbizo for oppositors and appellees.

OCAMPO, *M.:*

En 4 de octubre de 1935, Felix Bañaga inicío en el Juzgado de Primera Instancia de Zambales el intestado de la finada Eduviges Bañaga mediante la presentación de una solicitud de carta de administración, pidiendo que él fuese nombrado administrador judicial de los bienes relictos de dicha finada. En 29 de octubre de 1935, se dictó en este intestado un auto, señalando la vista de la solicitud para el día 20 de noviembre de 1935, a las 8:00 de su mañana. En este intestado Felíx Bañaga y Leonora Bañaga pidieron que ellos fueran declarados herederos de la finada Eduviges Bañaga, con derecho á participar en los bienes dejados por esta. En su escrito de fecha 7 de octubre, 1948 Anselmo Pascasio, Wilfredo Lucero, Librada Lucero, Artemio Lucero, Adoración Lucero, Teofilo Lucero, Jr., Priscila Lucero, Remedios Lucero y Lolita Lucero se opusieron á la petición de Felix Bañaga y Leonora Bañaga, alegando que la finada Eduviges Bañaga al tiempo de su fallecimiento dejó solamente dos hijos legitimos, Rufina Pascasio y Anselmo Pascasio; que Rufina Pascasio murió y le sobrevivieron sus hijos, los aqui co-opositores de Anselmo; que Felíx Bañaga y Leonora Bañaga no fueron reconocidos voluntariamente por la finada Eduviges Bañaga, en vida, como hijos naturales suyos.

Durante la pendencia de esta causa en el Juzgado de Primera Instancia de Zambales, Felíx Bañaga falleció, y entonces e sustituyó su hija, Maria Bañaga, quien, en representación de su difunto padre, pide que ella sea declarada heredera de la finada Eduviges Bañaga.

Por no exceder de ₱6,000 el valor de los bienes dejados por la finada Eduviges Bañaga, el Juzgado ordenó que se repartieran sumariamente dichos bienes entre los herederos de dicha finada Eduviges Bañaga, y, de conformidad con el artículo 1, Regla 91 de los Reglamentos, se recibieron pruebas sobre quienes eran los herederos llamados á suceder á la susodicha finada Eduviges Bañaga. Despues de sometidas las pruebas relativas á este extremo, el Juzgado de Primera Instancia de Zambales dictó su auto (order) en 21 de febrero de 1949, cuya parte dispositive se lee:

"In view of the foregoing, Felix and Leonora, both surnamed Bañaga, have not been voluntarily or judicially acknowledged and are hereby excluded from those entitled to participate as heirs of the late Eduviges Bañaga. The following are hereby declared as heirs of the late Eduviges Bañaga and as such, are entitled to participate in her estate, viz: Anselmo Pascasio, Wilfredo, Librada, Artemio, Adoracion, Teofilo Jr., Priscila, Remedios and Lolita, all surnamed Lucero."

De este auto apelaron Leonora Bañaga y Maria Bañaga, y en su alegato alegan que el Juzgado *a quo* erró (1) al declarar que Felíx Bañaga y Leonora Bañaga no fueron reconocidos voluntariamente por Eduviges Bañaga como hijos naturales suyos; (2) al declarar que Anselmo Pascasio, y Wilfredo, Librada, Artemio, Adoración, Teofilo Jr., Priscila, Remedios y Lolita de appellidos Lucero son los únicos herederos de la difunta Eduviges Bañaga, con derecho a participar en los bienes pertenecientes al intestado de ella; y (3) al denegar la moción de nueva vista.

En apoyo de su pretensión, las apelantes presentaron como pruebas los exhíbitos B y C, los cuales son certificados de nacimiento de Felíx Bañaga y de Leonora Bañaga, respectivamente. El exhíbito B demuestra que Felíx Bañaga, nació en 21 de julio de 1913, en San Antonio, Zambales, hijo ilegitimo de Eduviges Bañaga, y de padre desconocido; y en el exhíbito C consta que Leonora Bañaga nació en 28 de julio de 1917, en San Antonio, Zambales, hija ilegitima de Eduviges Bañaga, y de padre desconocido.

En el tiempo en que nacieron Felíx Bañaga y Leonora Bañaga la ley que prescribia la forma en que se podia hacer el reconocimiento de los hijos naturales era el Código Civil de 1889, en su artículo 131, que se lee:

'El reconocimiento de un hijo natural deberá hacerse en el acta de nacimiento, en testamento ó en otro documento público.'

Es indubable que el acta de nacimiento que se menciona en el cuerpo legal acotado es el registro á que se refieren los artículos 325 y 326 del repetido código civil.

"ART. 325. Los actos concernientes al estado civil de las personas se harán constar en el registro destinado á este efecto.

"ART. 326. El registro del estado civil comprenderá las inscripciones ó anotaciones de nacimientos, matrimonios, emancipaciones, reconocimiento y legitimaciones, defunciones, naturalizaciones y vecindad y estará a cargo de los jueces municipales u otros funcionarios del orden civil en España, y de los agentes consulares o diplomaticos en el extranjero."

La aplicación de estos artículos, sin embargo, fué suspendida por el decreto del Gobernador General de fecha 29 de diciembre de 1889, y jamás fueron puestos en vigor en las islas Filipinas (Corrales Tan Mariano *contra* Koster y otros, 48 Jur. Fil., 427). Si esto es cierto, podemos concluir, como asi concluimos, que no existia en nuestro pais la forma de reconocimiento en el acta de nacimiento desde el año 1889 hasta 1931, en

que entró en vigor la ley 3753 estableciendo del Registro Civil. Por consiguiente, cuando nacieron Felíx Bañaga y Leonora Bañaga no habia ley alguna que autorizara á hacerse el reconocimiento de un hijo natural en el registro civil.

Fundandose en que las pruebas no demuestran que el finado Felíx Bañaga, en vida, y Leonora Bañaga, habian sido reconocidos como hijos naturales de la difunta Eduviges Bañaga, el Juzgado *a quo* les declaró que no son herederos de dicha difunta.

Creemos que el Juzgado *a quo* cometió error en su conclusión, por la razón de que existen en autos hechos probados y no discutidos que podrán constituir una base para declarar que Leonora Bañaga tiene derecho á ser reconocida como hija natural de la difunta Eduviges Bañaga y para declarar también que el finado Felíx Bañaga, en vida, tenia derecho a su petición de que fuera reconocido como heredero de dicha difunta Eduviges Bañaga.

Como ya se ha dicho más arriba, el que presentó la solicitud de carta de administración de los bienes relictos de la finada Eduviges Bañaga en 4 de octubre, 1935, fué Felíx Bañaga que fallecio durante la pendencia de esta causa en el Juzgado de Primera Instancia de Zambales, y entonces le sustituyo su hija María Bañaga, la cual es ahora una de las apelantes. En la referida solicitud se alegó que Leonora Bañaga y Felix Bañaga eran herederos de la finada Eduviges Bañaga.

Según nuestro Tribunal Supremo, una solicitud en que el solicitante pide si le declare heredero puede considerarse como una petición para ser reconocido como hijo natural. (Lopez vs. Lopez, 68 Phi., 227). Y de acuerdo con el artículo 137 del viejo Código Civil, tal como fué reformado por los artículo 44 y 45 del Código de Procedimiento Civil, Felíx Bañaga y Leonora Bañaga podrián incoar acción para su reconocimiento forzoso como hijos naturales á los dos años de su mayoria de edad.

Considerando que cuando estos hermanos Felíx y Leonora reclamaron ser herederos a su difunta madre Eduviges Bañaga, en calidad de hijos naturales, no habia transcurrido aun el plazo de dos años desde que Felíx Bañaga llegó, á su mayoria de edad, opinamos que la una solicitud de carte de administración mencionada podria ser tenida como el equivalente de la acción de reconocimiento forzoso y partición de bienes que reconoce nuestro Tribunal Supremo en el asunto Briz *vs.* Briz, 43 Jur. Fil. 805. En este asunto el mismo Tribunal dijo:

"La cuestión relativa a si una persona, que está en la condición de la actual demandante, puede, en todo caso, mantener una acción compleja para obligar a que se le reconozca como hija natural, y el mismo tiempo como remedio ulterior, a que se la declare heredera, es una cuestión que, en opinión de este Tribunal, debe resolverse

en sentido afirmativo, siempre que concurran en este caso concreto las condiciones que justifican la acumulación de dos distintos motivos de acción. En otras palabras, no hay absoluta necesidad de exigir que la acción para obligar al reconocimiento se ejercite e inste hasta que se obtenga buen éxito, antes del ejercicio de una acción en que el mismo demandante trato de obtener un remedio adicional en su calidad de heredero. Ciertamente no hay nada que caracterice tanto á la acción para exigir el reconocimiento, que requiera la aplicación a este caso de un principio diferente del que se aplica en tros. Por ejemplo, si la demandante, en esta acción, hubiera demandado a todas las que necesariamente tendrian que se partes demandadas en la acción para obligar al reconocimiento, y hubiera sido permisible que el Juez formulara el pronunciamiento judicial, declarando que la demandante tiene derecho a ser reconocida como hija natural de Maximo Briz, y, al mismo tiempo, conceder el remedio adicional que se pide en este asunto contra los actuales demandados, esto, es, un derecho por el cual se les obligue a entregar a la demandante la parcela de terreno enjuiciada, ya a pagarla los daños y perjuicios que se le conceden en la sentencia apelada.

La conclusión antes expuesta, aunque no explicitamente formulada por este Tribunal, está indudablemente apoyada, en cierto sentido, por nuestras decisiones anteriores. Asi hemos declarado en gran número de casos, y debe considerarse como bien sentada la doctrina, que un hijo natural que tiene derecho a obligar el reconocimiento, pero que, en realidad, no ha sido legalmente reconocido, puede promover acción de partición para la división de la herencia entre sus coherederos (Siguiong *contra* Siguiong, 8 Jur. Fil., 5; Tiamson *contra* Tiamson, 32 Jur. Fil., 66); y la misma persona puede presentar tercería en actuaciones de distribución de bienes de su difunto padre o madre natural. (Capistrano *contra* Fabella, 8, Jur. Fil., 133; Conde *contra* Abaya, 13 Jur. Fil., 253; Ramirez *contra* Gmur, 42 Jur. Fil., 902). En ninguno de estos casos fué necessario que el demandante probara que se habia dictado un decreto anterior, obligando al reconocimiento. La razón bien clara es que, en litigios de partición y actuaciones de destribución de bienes, comparecen ante el Tribunal las demás personas que pudieran adquirir en virtud de herencia; y en tales actuaciones es adecuada la declaración de heredero."

El referido Código Civil dispone:

"ART. 136. La madre está obligada a reconocer al hijo natural:

1. Cuando el hijos se halle, respeto de la madre, en cualquiera de los casos expresados en el artículo anterior.

2. Cuando se pruebe cumplidamente el hecho parto y la identidad del hijo."

En el caso que nos ocupa son hechos no controvertidos los siguientes: que Felíx Bañaga nacio en 21 de julio de 1913, y la Leonora nació en 28 de julio de 1917; que son hijos de Eduviges Bañaga; que al tiempo de la concepción de dichos Felíx y Leonora, sus padres podian casarse sin impedimento alguno (vease pág. 3 alegato de los apelados); que en esta fecha Felíx y Leonora erán menores de edad; que Felíx inició el presento asunto en 4 de octubre de 1935, y entonces él tenia 22 años de edad y reclamó ser heredero de su difunta madre que falleció en 24 de Septiembre de 1921.

Apreciados en conjunto estos hechos, opinamos que se puede deducir de los mismos, como asi deducimos, que está probado plenamente el hecho del parto y la indenti-

dad de los hermanos Felíx Bañaga y Leonora Bañaga, en el sentido de que ellos son las criaturas que dió a luz Eduviges Bañaga, mencionada en los exhíbitos B y C respectivamente. Siendo asi el caso, por disposición de la Ley (Art. 136 párrafo 2 del viejo Código Civil) Lenora Bañaga tiene derecho á que se le reconozca como hija natural de la defunta Eduviges Bañaga, y el difunto Felíx Bañaga, en vida, bajo los hechos probados tenía derceho á ser reconocido como hijo natural de la misma difunta Eduviges Bañaga.

La cuestión ahora á determinar es la de si la acción ó reclamación de Leonora Bañaga y Felíx Bañaga tiene efecto contra los herederos legitimos de la difunta Eduviges Bañaga.

En cuanto á esta cuestión nuestro Tribunal Supremo, interpretando el artículo 137, dijo que, como una excepción, una acción para el reconocimiento de un hijo natural puede ejercitarse contra los herederos de la madre si esta falleció durante la menor edad del hijo (Conde *vs.* Abaya, 13 Jur. Fil., 254).

Leonora Bañaga nació en 28 de julio de 1917; su madre Eduviges Bañaga falleció en 24 de septiembre, 1921; ella reclamó ser heredera de la difunta Eduviges en 4 de octubre, 1935. Tenemos, por tanto, establecido en autos que Leonora Bañaga tenia 4 años de edad, más ó menos, cuando falleció su madre, y 18 años de edad cuando ella, juntamente con su difunto hermano Felíx, reclamó ser heredera, en calidad de hija natural, de dicha difunta Eduviges Bañaga. Por consiguiente, la acción é reclamación de Leonora Bañaga puede tener efecto contra los herederos legitimos de la susodicha difunta Eduviges Bañaga.

Y con respecto á la acción ó reclamación ejercitada por el que en vida se llamaba Felíx Bañaga, hemos dicho más arriba que él era menor de edad cunado su madre, Eduviges Bañaga, falleció en 24 de septiembre de 1924, y, en la fecha en que dicho Felíx Bañaga inició su acción, reclamando ser heredero de su difunta madre, tenia 22 años de edad, y por tanto, no habia aún expirado el plazo de los años desde que él llegó á su mayoria de edad. Durante la pendencia de esta causa en el Juzgado *a quo* falleció Felíx Bañaga, y entonces su hija Maria Bañaga, de conformidad con el artículo 17, Regla 3 de los Reglamentos de Los Tribuanles de Justicia, le sustituyó en el presente asunto.

Considerando que fué Felíx Bañaga, en vida, el mismo que habia ejercitado la acción arriba mencionada, que puede ser tenida como una acción para el reconcimiento de hijo natural, opinamos, y asi lo declaramos, que esta acción tambien tiene efecto contra los herederos legitimos de la difunta Eduviges Bañaga, por la razón de que no

existe en nuestro Código Civil ningún precepto que lo prohiba; y porque, además, nuestro Tribunal Supremo en el asunto Conde *vs.* Abaya (13 Jur. Fil., 262) no declara que una acción ya ejercitada para el reconocimiento de un hijo natural es intransmisible á los descendientes de este. Lo que simplemente ha sentado dicho Tribunal como doctrina en este asunto es que la acción para el reconocimiento de hijo natural, "solo éste puede ejercitarla. No es transmisible a sus descendientes ni á sus ascendientes". No ha dicho, y creemos que el referido tribunal no tuvo propósito de decir, que una vez iniciada ó ejercitada esta clase de acción por el mismo hijo natural la misma no podria ser continuada por sus herederos si él falleciere durante la pendencia de la causa. Es nuestra opinión que una vez ejercitada esta acción por uno que pide su reconocimiento como hijo natural, y este falleciere antes de resolverse definitivamente la causa, dicha acción, en intéres de la justicia y equidad, debe transmitirse á los herederos del mismo, puesto que no seria justo privar á dichos herederos de continuar con la acción debidamente ejercitada por su difunto padre que no tenia poder para obligar al juzgado que resolviese pronto su causa. Y teniendo en cuenta que el difunto Felíx Bañaga, en vida, ejercitó la acción que ahora la consideramos como una para su reconocimiento como hijo natural y él falleció durante la pendencia de la causa; y considerando además que su hija Maria Bañaga le sustituyó en este asunto, continuando con la acción ejercitada por su padre, opinamos, y asi lo declaramos, que dicha Maria Bañaga tiene personalidad para sostener lo que su padre pedia que fuese reconocido como dijo natural de la difunta Eduviges Balaga.

Por todas las consideraciones expuestas, se modifica la orden apelada. Declaramos que el finado Felíx Bañaga y Leonora Bañaga son hijos naturales reconocidos de Eduviges Bañaga; y por ende, la Maria Bañaga, hija legitima del finado Felíx Bañaga y como heredera de éste, y dicha Leonora Bañaga tiene derecho á particular en la partición de los bienes heridatarios de la difunta Eduviges Bañaga.

No se hace ningún pronunciamiento especial en cuanto á los costas.

Endencia y Sanchez, MM., están conformes.

Se modifica la orden.